No. B295935

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

CITY OF SANTA MONICA,

Appellant-Defendant,

v.

PICO NEIGHBORHOOD ASSOCIATION; MARIA LOYA,

Respondents and Plaintiffs.

APPELLANT'S REPLY BRIEF

Appeal from the Superior Court for the County of Los Angeles
The Hon. Yvette M. Palazuelos, Judge Presiding
Superior Court Case No. BC616804

Gov't Code, § 6103

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I. Introduction

The City's opening brief demonstrated that Latino voters' preferred candidates (both Latino and non-Latino) have won the vast majority of Council elections and other local elections in the past quarter-century, even though Latinos make up only 13.6% of the City's eligible voters. (AOB-41-46.) Unable to rebut this fundamental fact, respondents urge this Court to adopt an erroneous and unprecedented series of arguments to disregard those candidates and elections that do not fit the false narrative that Latino-preferred candidates usually lose because of white bloc voting.

Respondents do not dispute that in analyzing racially polarized voting, it is unconstitutional to identify minority voters' preferred candidates by embracing the stereotype that minorities prefer only minority candidates. (AOB-27-29.) Respondents instead claim that the trial court did no such thing here. (RB-51-53.) According to respondents, the court considered candidates of all races, performed a "searching, practical evaluation," and only then seized exclusively on candidates with Latino surnames. (E.g., RB-46.) This is revisionist history.

Numerous candidates without Latino surnames are estimated to have received *near-unanimous* support from Santa Monica's Latino voters, while others received more, or roughly equivalent, support as compared to Latino-surnamed candidates running in the same elections. Yet the trial court's approach left no room to even consider whether any non-Latino-surnamed

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candidates might qualify as "Latino-preferred." The court confined its inquiry to Latino-surnamed candidates from the outset, adopting wholesale the flawed methodology of respondents' expert, Dr. Kousser—who admitted that his identification of Latino-preferred candidates began and ended with Latino-surnamed candidates, rather than an objective inquiry into the preferences of Latino voters. (AOB-30-31.) This legal error alone warrants reversal.

Tellingly, respondents do not perform an election-by-election analysis. But they do suggest that certain candidates and elections should not count—the ones that defeat their arguments. For example, respondents ask this Court to (a) ignore several Latino-surnamed candidates who did *not* receive strong support from Latino voters, since this would fatally undermine the theory that Latino voters always prefer such candidates (RB-23, 46, 53, 60); (b) disregard *all* non-Latino-surnamed candidates, even those who received the most votes from Latino voters in a given election; and (c) exclude or discount the *six* combined victories of Latino candidates Tony Vazquez and Gleam Davis. (RB-23, 26, 61.)

Only by self-servingly manipulating the tally of candidates and elections in this manner—contrary to the case law and undisputed evidence—can respondents claim that Latino-preferred candidates are usually defeated by white bloc voting, or that Latinos' votes have been diluted. The application of the correct legal standards to the undisputed data confirms that Latino voters, despite their relatively small numbers, have usually been able to elect the candidates their votes show they

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prefer. The trial court therefore erred in holding that the City's election system violates the CVRA.

With respect to the Equal Protection ruling, respondents seek refuge behind the "substantial evidence" standard of review. This approach dodges the trial court's significant *legal* errors on both the "disparate impact" and "discriminatory intent" prongs. De novo review applies to these errors—including the court's failure to distinguish actions taken with awareness of potential disparate impact from those motivated by specific discriminatory intent.

In any event, the substantial-evidence standard is hardly a rubber stamp; this Court does not review respondents' cherry-picked evidence in isolation, but instead examines the whole record to determine whether a *reasonable* trier of fact could have found in respondents' favor. (See *Kuhn v. Dept. of Gen. Services* (1994) 22 Cal.App.4th 1627, 1633.)

As for the 1946 adoption of the current at-large election system, respondents have no answer to the abundant evidence showing that the Freeholders intended to (and did) *expand* electoral opportunities for minorities—which explains why prominent minority leaders supported the Freeholders' Charter, and why zero minorities or minority groups opposed it or sought a different electoral system. Respondents are reduced to arguing that even if the Freeholders themselves did not intend to discriminate, their constituents did, which may have somehow influenced their thinking. (RB-82.) On this record, no reasonable factfinder could conclude that the Freeholders adopted their

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Charter with the affirmative intent to disenfranchise minority voters.

The same goes for the Council's 1992 decision not to put districts on the ballot. (RB-37.) Respondents' case boils down to the fact that the Council heard several people speak in favor of districts and thus became aware that districts can, in the abstract, improve minority representation—which amounts to nothing more than an awareness of a *potential* disparate impact, not discriminatory intent. Respondents also downplay the fact that the Council *did* place districts on the ballot in 2002, and City voters (including 82% of Latino voters) rejected the proposal.

That a single Councilmember, focused on affordable-housing goals, preferred a hybrid electoral system, with three seats elected at-large and six elected by district—rather than seven elected by districts—cannot be the basis for a judgment that the City intentionally discriminated against minority voters by not switching from the at-large system. If it could, just about any political decision would be subject to attack on grounds of "racial discrimination"—which is precisely why courts have repeatedly warned against deciding cases in favor of plaintiffs who have no real evidence of discriminatory intent.

Santa Monica's electoral system is fair, open, and lawful. It has allowed Latino voters, despite their relatively small numbers, consistently to elect candidates of their choice. The trial court's ruling to the contrary rests on numerous legal errors. The Court should reverse and enter judgment in favor of the City.

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II. The Trial Court Erred as a Matter of Law in Finding Racially Polarized Voting and Vote Dilution Under the CVRA.

When the elections are analyzed objectively, consistent with case law, they demonstrate that Latino-preferred candidates almost always win in Santa Monica. (Section II.B.4, *post*.) Respondents attempt to convince this Court (as they did the trial court) to commit legal error by focusing only on certain Latino-surnamed candidates and disregarding the candidates and elections that do not fit their theory of the case.

A. This Court Should Review De Novo Whether Santa Monica's Elections Are Characterized by Legally Significant Racially Polarized Voting.

The material facts concerning Santa Monica elections—statistical estimates of how many voters of different racial groups voted for candidates in the last quarter-century of elections—are undisputed. (AOB-20.) The parties dispute only the *legal standards* used to determine whether those facts demonstrate legally sufficient racially polarized voting. These are pure questions of law, or mixed questions of law and fact, that warrant de novo review. (AOB-23-24.)

Respondents invoke *Thornburg v. Gingles* (1986) 478 U.S. 30 to support their claim that "[t]his Court must affirm the trial court's rulings on vote dilution under the CVRA if they are supported by substantial evidence." (RB-42.) But in *Gingles*, the Court was careful to note that the clear-error standard applicable to the "ultimate finding of vote dilution"—which under the FVRA is based on the "totality of circumstances"—"'does not inhibit an

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appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law.'" (478 U.S. at 78-79.) Put differently, "[w]here 'the ultimate finding of dilution' is based on 'a misreading of the governing law,' … there is reversible error." (*LULAC v. Perry* (2006) 548 U.S. 399, 427.)

Federal circuit courts likewise "review the district court's … legal conclusion that the third [*Gingles*] precondition has been met *de novo*." (*Cousin v. Sundquist* (6th Cir. 1998) 145 F.3d 818, 823; see also *Clay v. Bd. of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357, 1361 [plaintiff's "definition of 'minority preferred candidate'" was flawed as "a matter of law"].)

California decisions similarly hold that "a de novo standard … applies to interpretations of statutes and to mixed questions of law and fact when legal issues predominate." (*Jimenez v. U.S. Cont'l Mktg., Inc.* (2019) 41 Cal.App.5th 189, 196.) And "'the determination of whether the trial court selected the proper legal standards in making [a discretionary] determination is reviewed de novo.'" (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 533.)[1]

[1] *Jauregui* (cited at RB-42) has no bearing on these questions, because Palmdale did not challenge the "trial court's findings concerning voter dilution" or its identification of minority-preferred candidates. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 792.) *Jauregui* addressed only whether the CVRA applies to charter cities and whether a preliminary injunction was lawful. (*Id*. at 788.)

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B. There is No Legally Significant Racially Polarized Voting in Santa Monica.

Under any objective application of the correct legal standards, respondents failed to meet their burden to prove that Latino-preferred candidates usually lose because of white bloc voting.

1. The Trial Court Erroneously Focused Exclusively on Latino-Surnamed Candidates, Disregarding the Preferences of Latino Voters.

To assess racial polarization in voting, the trial court first needed to identify the candidates preferred by Latino voters in each election. (E.g., *Clay*, 90 F.3d at 1361.) In making this determination, the trial court focused solely on ten *Latino-surnamed* candidates who ran for Council in the last quarter-century. (24AA10685-10686.)

Respondents do not disagree with the many federal cases cited by the City holding that it would be erroneous and unconstitutional to identify minority-preferred candidates by looking solely at minority candidates. (AOB-26-29.) Such a methodology "would itself constitute invidious discrimination of the kind that the Voting Rights Act was designed to eradicate, effectively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate." (*Lewis v. Alamance Cty.* (4th Cir. 1996) 99 F.3d 600, 607.) Respondents also do not contend that the CVRA requires such an approach. (AOB-27.)

Instead, respondents insist that the trial court's exclusive focus on Latino-surnamed candidates was not based on a

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"presumption" or stereotyping of Latino voters. They suggest that the court "examined the data," considered all candidates of all races, and then "recognized" that Latinos prefer only Latino-surnamed candidates. (RB-51, 53.) This assertion mischaracterizes not only what the trial court did, but also how respondents presented their case below. (See AOB-30-31.)

From respondents' trial brief,[2] through Dr. Kousser's trial testimony,[3] and concluding with respondents' post-trial brief,[4] respondents and Dr. Kousser consistently argued that the trial court must examine only *Latino-surnamed* candidates and must not consider whether other candidates—such as O'Connor in 1994, who received near-unanimous support from Latino voters, or Genser and Bloom in 2008, who received more Latino support than the Latino-surnamed candidate—might qualify as Latino-preferred. (E.g., RT3059:20-23 ["Racially polarizing voting means to compare the vote … from Hispanics for a particular *candidate who is Hispanic* with the proportion of non-Hispanic whites who voted for him."], italics added; RT4241:11-20.) At respondents' urging, in the statement of decision they themselves wrote, the trial court adopted wholesale Dr. Kousser's methodology and charts, which focused solely on "the level of support for *minority*

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[2] "Dr. Kousser focused his attention on candidates recognized as Latino." (14AA5418.)

[3] "You look at the Latino voting for Spanish surname candidates." (RT4978:10-20.)

[4] "Dr. Kousser focused his attention on minority candidates." (22AA9735.)

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candidates…." (24AA10682, italics added; see also 24AA10684-10686; RT4240:12-14 ["I do not list the candidates whom I consider non-Hispanic white candidates in that table"].)

Respondents purport to justify the exclusive focus on Latino-surnamed candidates by pointing to the trial court's statement that "a Latino candidate received the most Latino votes" in six of the seven elections analyzed. (RB-51.) That statement is false. (24AA10476.) Alvarez won the *seventh*-highest share of Latino votes in 1996, and Piera-Avila finished well behind two white candidates in 2008. (25AA11007, 25AA11010.) Further, the trial court and respondents have never addressed the omission of the 2014 election, in which a Latino-surnamed candidate, Muntaner, finished last overall and was tied for *eighth* among Latino voters. (25AA11143, 28AA12332.)

Respondents also point to the trial court's statement that "[i]n most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for City Council." (RB-53.) But the undisputed data show that Latino support for Latino-surnamed candidates in 1994 and 2002 was effectively identical to (and statistically indistinguishable from) Latino support for non-Latino-surnamed candidates. (25AA11006, 25AA11008). Of the eight Council elections in which Latino-surnamed candidates ran, Latinos did not "strongly prefer" the Latino-surnamed candidate in five of them (1994, 1996, 2002, 2008, 2014).

The trial court's methodology thus reduces to an unwarranted application of a stereotype across elections where

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the data show it does not apply. In some Council elections with Latino-surnamed candidates, Latino voters strongly preferred such candidates; in others, they did not. The trial court erred in ignoring the data and accepting the offensive and inaccurate stereotype that in *all* Council elections, Latino voters could prefer only Latino-surnamed candidates.

Respondents also defend the trial court's myopic focus on Latino-surnamed candidates by invoking *Gingles*, in which, they say, "the Supreme Court only considered the levels of support Black candidates received from Black and White voters, respectively." (RB-52.) Once again, respondents are parroting Dr. Kousser's flawed "understanding … of Justice Brennan's opinion in *Gingles*"—namely, that "Justice Brennan looks only at the Black candidates. So using my understanding of the implications of that for what analysis I as an expert witness should make, … *I concentrate on the Latino candidates entirely*…." (RT3080:2-23, italics added.)

As the City has explained (AOB-31, fn.4), the Court in *Gingles* "refer[red] to the preferred representative of black voters as the 'black candidate' and to the preferred representative of white voters as the 'white candidate'" *only* "as a matter of convenience," because it so happened in that case that "blacks preferred black candidates" and "whites preferred white candidates." (478 U.S. at 68 (plur. opn.); accord *Lewis*, 99 F.3d at 608-610 [requiring data-driven approach to analysis of *all* elections and candidates, because minorities might prefer non-minorities].)

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The correct approach to identifying Latino-preferred candidates should begin not with stereotypes, but with objective data. In some jurisdictions and some elections, Latino voters may prefer only Latino-surnamed candidates. But the trial court simply assumed that to be the case here, contrary to the undisputed data. This error alone warrants reversal.

2. The Trial Court Improperly Focused Only on Council Elections in Which a Latino-Surnamed Candidate Ran.

Respondents also do not dispute that the trial court examined only those Council elections in which a Latino-surnamed candidate ran. (AOB-34.) Respondents' defense of this approach simply reiterates what the City explained in its opening brief: Some, but not all, courts give greater *weight* to elections in which a minority candidate ran. (RB-48-51; AOB-34-35; *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 552.)

As an initial matter, respondents are conflating elections involving minority candidates and elections involving minority-*surnamed* candidates. Respondents offer no support—in the case law or the CVRA—for devaluing elections featuring a Latino candidate but no Latino-*surnamed* candidate (such as the 2006 and 2010 elections here).

Moreover, even if this Court were to follow respondents' approach—giving lesser weight to elections that did not feature a Latino-surnamed candidate—respondents have supplied no valid reason to *ignore* the other elections altogether. "[T]o our knowledge, no court has held that a white candidate cannot, as a

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matter of law, be a minority-preferred candidate, and therefore that white-white elections are irrelevant to the *Gingles* third element inquiry." (*Lewis*, 99 F.3d at 610.)

Nor does the CVRA itself instruct courts to ignore such elections entirely. A contrary construction would make it impossible to find liability in a political subdivision where no minority candidates ever ran. (AOB-35.) Respondents retort that liability would still be possible in that scenario, since "[t]he CVRA also provides that RPV can be established by analyzing 'other electoral choices that affect the rights and privileges of members of a protected class'"; respondents offer Proposition 187 as an example of such an electoral choice. (RB-48, fn.9.) This argument sidesteps the problem identified by the City: There is no reason that legally significant racially polarized voting and vote dilution should go ignored if minority-preferred candidates happen to be of a different race or ethnicity. Further, *every* electoral choice—including *every* Council election—"affect[s] the rights and privileges of members of a protected class." Under the CVRA, these choices all factor into the racially-polarized-voting analysis.[5]

If this Court agrees that all elections during the relevant period must at least be taken into account, even if some get lesser

[5] Moreover, Proposition 187 already falls under another category listed in the same sentence of the statute quoted by respondents—"elections involving ballot measures." (§ 14028(b).) The phrase "or other electoral choices that affect the rights and privileges of members of a protected class" thus appears to be a residual clause meant to capture *all* aspects of elections that may bear on the racial-polarization question.

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weight, this is another independent ground for reversal.

3. An Election-by-Election Analysis Reveals that Latino-Preferred Candidates Almost Always Win—and that Respondents Have Manipulated the Set of Relevant Elections and Candidates to Reverse-Engineer a Contrary Conclusion.

Respondents decline to perform an "election-by-election" analysis in their brief (*Clay,* 90 F.3d at 1361), presumably because doing so would expose the inconsistencies and errors in the trial court's approach. Instead, as demonstrated in the election-by-election analysis below, respondents pepper their brief with suggestions that this Court should discount or ignore certain candidates and elections for various reasons. The Court should reject these invitations to err.

As shown below, even if the Court agrees with respondents and confines its analysis to the Council elections in which Latino or Latino-surnamed candidates ran, Latino-preferred candidates have almost always won, and few of those who lost were even arguably defeated by white bloc voting.

a. 1994.

Vazquez, Finkel, and O'Connor were all Latino-preferred. (25AA11006.) The point estimate of Latino support for each was well above 100%, and Dr. Kousser testified that a point estimate exceeding 90% means that "close to 100 percent of the Latinos cast" a vote for that candidate. (RT3172:18-21; see also RT3058:19-26.) Dr. Kousser regarded only Vazquez as Latino-preferred because he "only lists Spanish-surnamed candidates. I

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do not list the candidates whom I consider non-Hispanic white candidates in that table." (RT4240:10-4241:10.) He followed this approach for *every* election he analyzed. (RT4241:11-20.)

O'Connor won, and neither Vazquez nor Finkel was defeated by white bloc voting. (AOB-47.) Respondents say nothing about Finkel, but they offer a novel—and therefore waived—take on the causation element of racially polarized voting to salvage their argument that Vazquez was defeated by white bloc voting in 1994. Although respondents and the trial court have always focused exclusively on differences in voting between *Latino voters* and *white voters*,[6] and although Vazquez came in third (and Finkel second) among white voters in 1994 and would have been elected if only whites had voted (AOB-47), respondents argue, for the first time, that a "coalition of non-Hispanic Whites, Asians and Blacks" must have banded together to defeat Vazquez in 1994. (RB-61-62.)

Respondents rely on *Meek v. Metropolitan Dade County* (11th Cir. 1990) 908 F.2d 1540 to support their novel "coalition" theory. (RB-61-62.) In that case, whites were not a majority of voters, and "Black and Hispanic voters [we]re [so] hostile toward each other" that each group routinely sided with white-preferred candidates to avoid electing the other group's preferred

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[6] (E.g., RB-51-52 [stressing propriety of comparing *only* support for minority candidates from majority (here white) and minority (here Latino) voters]; AOB-30-31 [respondents' expert looked only at Latino and white voting for Latino-surnamed candidates]; 24AA10682-10686 [trial court adopted this approach].)

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candidates. (908 F.2d at 1545.) Here, by contrast, respondents have "offered no evidence or argument to show that white voters … vote in a bloc with voters classified as 'other' races." (*Harris v. City of Texarkana* (W.D.Ark. Jan. 9, 2015) 2015 WL 128576, at *6 [distinguishing *Meek*].) Nor could they—white, African-American, and Asian voting patterns are consistently different in Santa Monica. (See 25AA11006-110012.)

Meek also appears to be the *only* case holding that a shifting "coalition" of white and non-white voters can satisfy the third *Gingles* precondition of majority-bloc voting. That *Meek* is an outlier is unsurprising given the language of that precondition: "*the white majority* votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate." (478 U.S. at 50-51, 56, italics added; see also *Nipper v. Smith* (11th Cir. 1994) 39 F.3d 1494, 1533 (en banc) ["to be actionable, the electoral defeat at issue must come at the hands of a cohesive white majority"].)

To the extent other cases address combinations of different groups of voters, it is in determining whether a minority group is large enough to form a majority of voters in a hypothetical district (the first *Gingles* precondition). In these cases, courts have squarely rejected coalition or crossover districts. (E.g., *Bartlett v. Strickland* (2009) 556 U.S. 1, 19 (plur. opn.); *Nixon v. Kent Cty.* (6th Cir. 1996) 76 F.3d 1381, 1386-1392 (en banc).) No court has yet decided in a published opinion whether such a district is permissible under the CVRA. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 690 [leaving for remand question whether

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"the court [is] precluded from employing crossover or coalition districts … as a remedy"].)

In short, the concept of a "coalition" is doubtful enough in its usual context (the first *Gingles* precondition); it is doubly doubtful, notwithstanding *Meek*, in the context of the third precondition; and regardless, the facts do not support such a theory here.[7] Respondents have therefore identified no reason to attribute Vazquez's loss in 1994 to white bloc voting rather than to insufficient support from African-American and Asian voters. (AOB-46-48.)

b. 1996.

Three white candidates (Feinstein, Olsen, and Genser) received effectively 100% of the Latino vote—and significantly more Latino support than the Latino-surnamed candidate. (25AA11007.) Feinstein and Genser won.

Olsen, like Vazquez and Finkel in 1994, was not defeated by white bloc voting, because he would have won if whites had been the only voters. (*Ibid.*)

Dr. Kousser ignored these candidates and focused only on voting for a Latino-surnamed candidate, Alvarez. (RT3064:18-27.)

Respondents never mention Alvarez in their brief, because

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[7] Respondents contend that the CVRA commands a comparison between the choices of Latinos and the aggregate choices of all non-Latino voters. (RB-62.) If that is the case, then the judgment should be reversed for this reason alone, because neither respondents' expert nor the trial court performed such an analysis. (See AOB-30-31.)

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she does not fit their theory that Latinos vote solely on the basis of surnames. But, in a transparent effort to avoid the inconvenient fact that Alvarez and Latino-surnamed candidates in other elections received little Latino support, respondents urge the Court to narrow its analysis to "serious" Latino-surnamed candidates. (RB-23, 46, 53, 60.)

Respondents never define, nor did they introduce evidence at trial supporting, any distinction between "serious" and "non-serious" candidates. Respondents are again reasoning backwards in an effort to justify their stereotyping assumption that Latino voters prefer only Latino-surnamed candidates—if a Latino-surnamed candidate received little support from Latino voters, it must be because he or she was not "serious."

For this reason, the City repeatedly objected to the use of the vague label "serious" in respondents' proposed statement of decision. (24AA10476-10477, 24AA10485-10486.) And the trial court sustained *all* of those objections, even though it rubber-stamped respondent's proposed statement in almost every other respect. (24AA10667.)

c. 2002.

Three candidates (Aranda, McKeown, and O'Connor) were supported by over 50% of Latino voters, and two (McKeown and O'Connor) prevailed. (25AA11008.) But the City counts only Aranda and McKeown as Latino-preferred. The point estimate of Latino support for Aranda (83%) is nearly identical to (and statistically indistinguishable from) the point estimate of Latino

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support for McKeown (77%). (*Ibid*.) The City discounts O'Connor (57%) because she received significantly less (though *still* statistically indistinguishable) Latino support than a losing Latino-preferred candidate (Aranda).

Dr. Kousser focused exclusively on Aranda because she was "the only Spanish surname candidate." (RT3068:11-12.) Respondents suggest—without directly stating—that Aranda was meaningfully more preferred than McKeown because her Latino-support point estimate is six points higher than McKeown's, even though both estimates are high and statistically indistinguishable. (RB-56.)

There is no basis for this manipulation of the list of preferred candidates. Indeed, one of the cases respondents cite expressly *requires* McKeown to be considered Latino-preferred: "if candidate X was white and received almost as much support from the black community as candidate Y who was black and was the leading vote getter in the black community, then the Court would deem both candidate X and Y to be black preferred." (*Askew v. City of Rome* (11th Cir. 1997) 127 F.3d 1355, 1379, fn.9; RB-55.) Other cases cited by the City hold the same. (See AOB-37-38.)

In an effort to circumvent this authority and ensure that McKeown is excluded, respondents assert that courts have declined to deem Latino-preferred winning candidates who may have received slightly fewer minority votes than a losing candidate—that is, "when faced with statistical estimates similar to those found by Dr. Kousser." (RB-56.) But they do not cite a single case holding that minor variations in point estimates are

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dispositive.

Respondents' best case is *Harper v. City of Chicago Heights* (N.D.Ill. 1993) 824 F.Supp. 786, in which, they claim, "the court declined to label an incumbent black candidate as black-preferred where she received just 11% less support from black voters than another black candidate who was the top choice of black voters." (RB-56.) Respondents neglect to mention that the court's conclusion did not rest solely or even principally on that 11-point gap; that same candidate was beaten by *29 points* among black voters in another election and by *41 points* in yet another—which cemented the conclusion that she was not preferred by black voters. (824 F.Supp. at 790.)

Respondents otherwise contend that the City's method of identifying Latino-preferred candidates is over-inclusive and sweeps in less-preferred candidates. Every variation on this theme is wrong.

First, respondents assert that there can be only one Latino-preferred candidate in multi-seat Council elections. (RB-57.) But the case law makes clear that when minority voters have more than one vote to cast, they might legitimately prefer multiple candidates, although courts must be careful not to count as "minority-preferred" winning candidates who received substantially fewer minority votes than losing candidates. (*Levy v. Lexington Cty.* (4th Cir. 2009) 589 F.3d 708, 716; *NAACP, Inc. v. City of Niagara Falls* (2d Cir. 1995) 65 F.3d 1002, 1019.) The CVRA endorses this approach, both by incorporating the federal case law (§ 14026(e)) and by specifying that in multi-seat at-large

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elections like those at issue, "the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis" (§ 14028(b)).

Respondents' theory appears to be that Latino voters always prefer Latino-surnamed candidates, but often cast "throwaway" votes for less-preferred white candidates. (RB-53-54, 57.) But that theory is inconsistent with the facts.[8] Respondents' expert estimated how many votes were cast by members of each group in each election. (E.g., 25AA11010.) In several elections, Latino voters did not vote for Latino-surnamed candidates *even though they had votes to spare*. (25AA11007 [Alvarez]; 25AA11010 [Piera-Avila]; 25AA11011 [Gomez, Duron]; 28AA12332 [Muntaner].) Latino voters' unwillingness to cast surplus votes for Latino-surnamed candidates demonstrates that (1) Latino voters are motivated by more than candidate ethnicity alone, and (2) they do not cast additional votes—for white or Latino candidates—simply because they can.

Second, respondents argue that the City has improperly designated as "Latino-preferred" the Latino voters' second, third, and fourth choices so long as they "received a vote from at least 50% of Latinos and 95% confidence intervals" for those candidates overlap with those of the candidate who received the most Latino votes. (RB-53-54.) That is not what the City has argued.

Rather, the City contends that Latino-preferred candidates

[8] Indeed, sometimes the pattern may be *reversed*. In 2002, Aranda was *not* the first choice of Loya or de la Torre; they preferred a white candidate. (AOB-33.)

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must be identified in three steps: (1) begin with the three or four candidates (depending on how many seats are up in that election) who would have won had Latinos been the only voters; (2) remove from that "preferred" list any winning candidates who received a significantly lower share of Latino votes than a losing candidate; and (3) remove any remaining candidates who received lukewarm Latino support (under 50%). (22AA9858-9859; AOB-36-38.)

This approach follows the CVRA and federal case law by accounting for the relative levels of Latino support received by all candidates, and thus the order of Latino preference, to identify those candidates who were truly Latino-preferred. It also reflects the "searching practical evaluation" that respondents repeatedly assert is required (RB-51, 53), particularly in comparison with the trial court's exclusive focus on Latino-surnamed candidates or respondents' insistence on looking only at the candidate estimated to have received the most Latino support. (See *Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.* (E.D.Mo. 2016) 201 F.Supp.3d 1006, 1047 [in multi-seat elections, "looking only at the top-ranked candidate does not capture the full voting preference picture" because "it disregards the fact that multiple seats are available in each election, and with that the possibility that minority voters prefer more than one candidate"].)

Third, respondents claim that the City's approach "amounts to a rule that minority voters must accept the loss of a clearly preferred candidate as a 'win' if a distant consolation prize squeaks across the finish line." (RB-54.) Yet, tellingly, they do not identify a *single* example of such a "distant consolation prize"

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in Council elections. Respondents name only the 2016 election that Vazquez won and de la Torre lost, with very close (and statistically indistinguishable) support from Latino voters. (RB-56, fn.11.) Was Vazquez—a Latino community activist and then two-time Council election winner who was serving as mayor and had consistently garnered strong Latino support—Latino voters' "distant consolation prize" in 2016?

Fourth, respondents assert that Latino-preferred candidates in Santa Monica can win elections only if they are white. (RB-57-59.) Not only are respondents continuing to focus, inappropriately, on the race of the candidates rather than the preferences of Latino voters, their narrative happens to be false. Vazquez has won a Council seat three times, as has Davis. Latinos have also repeatedly won seats on the City's other governing boards: de la Torre, Leon-Vazquez, Escarce, and Quinones-Perez, for example, each have won at least three elections. (See p. 38, *post*.)

d. 2004.

Loya was the lone Latino-preferred candidate; she lost, arguably due to white bloc voting. (25AA11009.) Although another candidate (Bloom) prevailed with the support of over 50% of Latino voters, the City does not regard him as Latino-preferred because Loya received significantly more Latino support.

e. 2006.

A white candidate (McKeown) was the top choice of Latino

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voters (58%) and the only candidate to receive at least 50% of Latinos' votes; he won. (28AA12329.)

A Latina candidate (Davis) ran and lost in 2006. The City does not treat her as Latino-preferred because she was not one of the top three Latino vote-getters. Dr. Kousser (and thus the trial court) did not even analyze the 2006 election because there were no Latino-*surnamed* candidates.

Respondents attempt to redefine who counts as Latino to eliminate the 2006 election and the inconvenient victories of Davis in 2010, 2012, and 2016. The CVRA defines a "protected class" by reference to federal law, which, in turn, defines the protected class of Latinos as "persons who are … of Spanish heritage." (AOB-43.) Because Davis's father was Mexican, she is a Latina candidate under the CVRA, which requires courts to examine, at a minimum, those "elections in which at least one candidate is a member of a protected class." (*Ibid*.; § 14028(b).)

Respondents and the trial court interpret this formulation to mean "elections ... that involved at least one candidate *recognized as* Latino by the Santa Monica electorate." (RB-23, italics added; see also 24AA10684-10685, fn.7.) According to respondents and the trial court, whether someone is Latino depends on a telephone survey of 400 voters. (*Ibid.*) Respondents have never cited *any* support for this assertion—because there is none. The CVRA requires "Spanish heritage," which Davis indisputably has. There is no reason to exclude the 2006 election, or Davis's later victories in 2010, 2012, and 2016.

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f. 2008.

Two white candidates (Genser and Bloom) prevailed with the support of 50% or more of Latino voters. (25AA11010.) But Dr. Kousser focused solely on the Latino-surnamed Piera-Avila, even though the point estimate of her share of the Latino vote was between 16 and 22 points lower than that of the two winning candidates. (*Ibid.*)

To minimize the lack of Latino support for a Latino-surnamed candidate, respondents suggest that Piera-Avila should be regarded as not "serious." (RB-26, fn.4.) This is the second of five such candidates respondents would have the Court ignore on account of this empty label alone.

g. 2010.

In two elections, one for a partial and one for a full term, three Latino-preferred candidates (McKeown, O'Connor, and O'Day) prevailed. (AOB-42-43.) Another winner happened to be Latina (Davis), but the City does not treat her as Latino-preferred because she received less than 50% Latino support. (28AA12330.) As with the 2006 election, Dr. Kousser and the trial court did not analyze the 2010 elections because there were no Latino-*surnamed* candidates.

h. 2012.

All four Latino-preferred candidates (Vazquez, O'Day, Winterer, and Davis) prevailed. (25AA11011.) Of those, Dr. Kousser addressed only Vazquez, because of his surname, even though Davis is Latina.

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Dr. Kousser also addressed—again strictly because of their Latino surnames—two other candidates (Gomez and Duron) who did not poll well among Latinos. (RT3189:26-28; 24AA10686.) Dr. Kousser admitted that neither Gomez nor Duron was Latino-preferred. (RT4224:11-14, RT4235:26-28, RT4248:14-18.) Respondents would presumably discount both as "non-serious."

Respondents also seek to discount Vazquez, who won, on the theory that the trial court found "special circumstances." (RB-26-27, 47, 60-61.) But in a decision written by respondents themselves, the trial court did not describe that election as a "special circumstance," nor did it state that it was discounting that election. There is no reason to defer to the trial court's effort to weigh elections, because it made none.

Respondents also accuse the City of misrepresenting the third *Gingles* precondition by omitting the words "special circumstances." (RB-27, fn.5.) But there is a good reason for that omission: The only time the trial court addressed the weight to be given to a particular election was in rejecting the *City's* argument that de la Torre's defeat in 2016 should be discounted as a special circumstance (24AA10688), since overwhelming evidence showed that de la Torre (a four-time winner of School Board elections) threw that Council election to gin up support for this lawsuit, which his wife and organization filed before the election. (22AA9860, 22AA9818; see § 14028(a) ["elections conducted after the filing of the action" are less probative].) The City is not challenging the trial court's rejection of this argument.

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i. 2014.

The lone Latino-preferred candidate (McKeown) prevailed. (28AA12331-12332.)

Although a Latino-surnamed candidate (Muntaner) ran in this election and performed poorly among Latino voters, Dr. Kousser and the trial court did not analyze it; respondents never explain why in their brief. (AOB-34, fn.5, 44.) Presumably, respondents regard her, too, as "non-serious"—the *fifth* such candidate in this summary—even though they made no such argument below and the trial court made no such finding.

j. 2016.

Three candidates, two of whom (Vazquez and O'Day) won, received votes from at least 50% of Latino voters. The City does not count the victory of O'Day (who lives in the Pico Neighborhood) in its favor, because he received significantly less support than a losing preferred candidate, de la Torre.

Respondents, by contrast, again seek to manipulate the tally in their favor, arguing that Vazquez's victory should be discounted either because he was an incumbent (RB-61, fn.13) or because de la Torre may have received slightly more (yet still statistically indistinguishable) support from Latino voters. (RB-56, fn.11.)

The trial court did not conclude, and respondents did not argue below, that Vazquez's 2016 victory should be discounted because he was an incumbent. (See 22AA9737, 24AA10688.) In any event, courts have cautioned against discounting minority-preferred candidates' victories because of incumbency. "[I]ncumbency plays a significant role in the vast majority of

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elections" and cannot qualify as a "special circumstance" unless it "play[s] an unusually important role in the election at issue; a contrary rule would confuse the ordinary with the special." (*Clarke v. City of Cincinnati* (6th Cir. 1994) 40 F.3d 807, 813; accord *Cottier v. City of Martin* (8th Cir. 2010) 604 F.3d 553, 561, fn.5 (en banc).)

4. When Latino-Preferred Candidates Are Properly Identified, It Becomes Plain That There Is No Legally Significant Racially Polarized Voting.

Notwithstanding their attempts to mischaracterize the City's arguments, respondents agree with the basic principles set out in the opening brief, including that (1) the identification of Latino-preferred candidates must begin with an objective, data-driven analysis of election returns, and (2) it is improper to deem Latino-preferred a winning candidate who received significantly fewer Latino votes than a losing candidate.

Properly identified under these principles, Latino-preferred candidates usually prevail in Santa Monica's at-large elections.

The parties' experts analyzed 11 Council elections held since 1994. (AOB-Addendum.) There were 22 Latino-preferred candidates in those elections, with Latino-preferred candidates defined as those who met the three-step standard identified above. Of those candidates, 16 (73%) won. And of the few Latino-preferred candidates who lost, only three (14%) were arguably defeated by white bloc voting; such defeats were therefore far from "usual."

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Even if the Court confines its analysis to a smaller set of elections—for example, excluding the 2006 and 2010 elections that featured Davis, a Latina candidate, and examining only those eight Council elections in which a Latino-*surnamed* candidate ran (1994, 1996, 2002, 2004, 2008, 2012, 2014, 2016)—the result is the same. Of the 18 Latino-preferred candidates who ran in those elections, 12 (67%) prevailed, and only three of the 18 (17%) lost arguably because of white bloc voting.

And even if the Court looks *solely* at the 11 Latino-*surnamed* candidates in the eight elections in which they ran (which would be legal error, as explained above), only three such candidates (Aranda in 2002, Loya in 2004, and de la Torre in 2016) were arguably Latinos voters' first preference and arguably lost as a result of white bloc voting.

If there were any doubt about the success of Latino-preferred candidates in Santa Monica, the results of exogenous elections (elections for the School, College, and Rent Control Boards) dispel it. Fifteen such contested elections were analyzed. (AOB-Addendum.) Of 27 Latino-preferred candidates, 23 (85%)—including 14 of the 16 Latino-surnamed candidates noted in the statement of decision (24AA10693-10694)—*won* their elections. (AOB-45, Addendum.) And only four (15%) were arguably defeated by white bloc voting. That the trial court nevertheless used such elections to *support* its conclusion of racially polarized voting underscores the illogical nature of its methodology. (AOB-44-46.) Respondents fail to address this fundamental flaw in the trial court's reasoning, other than to insist that the court gave

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exogenous elections "their proper weight." (RB-48, fn.8.)

* * *

Under any objective, consistent, and data-driven approach to analyzing the undisputed election results, there is no legally significant racially polarized voting in Santa Monica's Council elections, because Latino-preferred candidates are not "usually" defeated by white bloc voting—which respondents concede is the operative standard. (AOB-46; RB-60-61.) The trial court committed reversible error in concluding otherwise.

C. No Evidence—Only Illogical Speculation—Supports the Trial Court's Conclusion That the City's At-Large System Dilutes Latino Votes.

The CVRA requires proof of vote dilution. (AOB-49-50.) Respondents contend in half a sentence that racially polarized voting alone is sufficient for liability. (RB-63-64.)

Respondents' reading threatens to render most of the statute surplusage, including section 14027, which mirrors language in VRA section 2 requiring proof of an injury *caused by* the challenged electoral system. (AOB-49-50.) Further, respondents' reading underscores the problem identified by the City (AOB-56-60): If polarization alone were the touchstone of CVRA liability, *any* protected class, no matter how small, could force a political subdivision to change its electoral system on the basis of mere differences in voting behavior—even if the protected class could not elect its preferred candidates under any alternative system. Requiring courts to draw districts or impose other race-conscious remedies under such circumstances—on the

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basis of an incurable lack of political power, rather than any cognizable injury—raises serious constitutional concerns. (Part III, *post*.)

Because no alternative electoral scheme would enhance Latino voting strength, there is no evidence of vote dilution in Santa Monica. The trial court's contrary conclusion depends on a "remedy" that would not only be ineffective, but unconstitutional.

1. There Is No Precedent for Respondents' Proposed Districting Remedy.

Respondents attempt to duck constitutional questions by contending that the district the trial court adopted, in which only 30% of eligible voters would be Latino, falls "squarely within the range the U.S. Supreme Court identifies as 'influence districts' that empower minority voters." (RB-66, citing *Georgia v. Ashcroft* (2004) 539 U.S. 461, 470-471.) This is misleading, at best.

The Supreme Court has *never* endorsed the concept of influence districts in section 2 cases. (AOB-57-58.) To the contrary, the Court squarely rejected such districts in *Bartlett*, holding that section 2 supplies a remedy "*[o]nly* when a geographically compact group of minority voters could form a majority in a single-member district." (556 U.S. at 26, italics added.) *Georgia v. Ashcroft*, by contrast, is a *section 5* case; it addresses an entirely different remedial scheme concerning the federal government's preclearance of certain states' new voting practices. (539 U.S. at 465-466.) The Supreme Court has repeatedly held that "[t]he inquiries under §§ 2 and 5 are different," and so "although the presence of influence districts is

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relevant for the § 5 retrogression analysis, 'the lack of such districts cannot establish a § 2 violation.'" (*Bartlett*, 556 U.S. at 24-25.)

This Court should resist, on these facts, respondents' call to write the first decision *anywhere* finding liability and imposing districts under even remotely similar circumstances.

2. The Trial Court Erred in Concluding That An Alternative Electoral System Will Enhance Latino Voting Strength.

Respondents argue that evidence supported the trial court's conclusory finding that other electoral systems—either an "influence" district or an alternative at-large scheme like limited voting—would improve Latinos' voting power. (RB-65-67.) None of these arguments has merit.

Respondents say nothing about the fundamental flaw in the trial court's remedial thesis. (See AOB-52-53.) Namely, it cannot be the case that the City is "plagued by" racially polarized voting (RB-26, 47) *and also* that a 30%-Latino district would enhance Latino voting strength. If, as respondents argue, Latinos vote so differently from white voters, such a district would *guarantee* that Latinos would be outvoted by whites in winner-take-all district elections.

Respondents do little to defend their expert's analysis of the effectiveness of a hypothetical Pico District, merely asserting that he "recreated prior elections" and that although "Latino candidates preferred by Latino voters … lose citywide, they often receive more votes than any other candidate in the Pico

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Neighborhood district." (RB-30-31.) This is false. (AOB-54-55.) Respondents' expert analyzed seven elections. In most of those elections, the candidate estimated to have received the most votes in the district also prevailed in the at-large election. (26AA11536-11538.) In the 2012 election, a white candidate (O'Day) would have received the most votes in the Pico District and prevailed over a Latino candidate, Vazquez, who won in the at-large system. (26AA11537.)

Respondents' defense of their other expert's analysis of alternative at-large election schemes is no more persuasive. Latino voters would not be able to elect candidates of their choice under such a scheme, because they would not surpass the "threshold of exclusion" (12.5% of the electorate). (AOB-55-56.)

Respondents contend only that it is inappropriate to consider voter turnout in assessing the viability of such a scheme. (RB-66-67.) That would be true if a hypothetical *district* were at issue: The cases cited by respondents hold that turnout may not be considered in determining whether a protected class would constitute the majority of voters in a hypothetical district (*United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411, 426-427) or whether voters in such a district would be sufficiently cohesive to elect candidates of their choice (*United States v. Blaine Cty.* (9th Cir. 2004) 363 F.3d 897, 910-911).

But courts *do* consider voter turnout in determining the effectiveness of a proposed alternative at-large election scheme. (AOB-55-56.) If a protected class could not elect candidates of its choice under such a scheme, whether because its turnout-adjusted

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share of voters is too small or for any other reason, "there neither has been a wrong nor can be a remedy." (*Growe v. Emison* (1993) 507 U.S. 25, 40-41; see also *Gingles*, 478 U.S. at 50, fn.17 ["Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice"].)[9]

Respondents have cited no case imposing an alternative at-large election remedy under circumstances like these, where voters of the protected class cannot form the majority in any hypothetical district and cannot, in any at-large configuration, exceed the threshold of exclusion under reasonable assumptions. In the few published decisions imposing an alternative at-large remedy, the protected class was large enough to constitute a majority of eligible voters in a hypothetical district; the court determined in each case, however, that an alternative at-large system would grant the protected class the ability to elect candidates of its choice. (E.g., *United States v. Euclid City Sch. Bd.* (N.D.Ohio 2009) 632 F.Supp.2d 740, 769-770.)

* * *

Latino voters are *already* electing candidates of their choice. There is no cause to abandon the City's well-functioning electoral system in favor of a districting plan that would limit rather than

[9] Hedging their bets, respondents argue that "there is no evidence that turnout among Latinos in Santa Monica is significantly lower than that of non-Latinos." (RB-67.) To the contrary, there was unrebutted expert testimony that Latino turnout has been consistently low. (28AA12378, RT8301:2-11; see also RT8591:13-19, RT8593:26-8594:4.)

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expand Latino voting power.

3. Because the District Ordered by the Trial Court Would Not Remedy Any Harm, It Is Impermissible to Strand Latinos Outside the Pico District in Overwhelmingly White Districts.

If respondents were correct that Santa Monica elections are highly polarized (e.g., RB-25), then under the new system foisted on the City, some Latino voters would be "packed" into a district in which they would account for only 30% of voters, rendering them unable, in contrast to the current electoral system, to elect candidates of their choice because other voters would routinely outvote them in winner-take-all, single-seat elections. (See Part II.C.2, *ante*.) And there is no dispute that the majority of the City's Latino voters would be "cracked" across the six other (overwhelmingly white) districts, without *any* real say in local elections. Respondents do not dispute that the same would be true for the City's African-American and Asian voters. (AOB-53.)

Citing *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, respondents contend that this drastic side effect of the judgment is irrelevant. (RB-65-66.) But this case is factually distinguishable from *Watsonville*: There, as in other cases holding defendants liable under section 2, it was possible to create a majority-minority district. (863 F.3d at 1414 [*two* majority-Latino districts possible].)

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D. Respondents Offer No Reason to Consider the Section 14028(e) Factors Absent Evidence of Legally Significant Racially Polarized Voting and Vote Dilution.

Respondents concede that the Senate factors "are considered in FVRA cases only after certain preconditions are demonstrated," but they insist that the factors set out in section 14028(e) of the CVRA are different—that they are "part of the [racially-polarized-voting] analysis itself." (RB-63.)

This argument is inconsistent with the text of the CVRA and the federal case law it incorporates. Section 14026(e) defines racially polarized voting by reference to "case law regarding enforcement of the federal Voting Rights Act." And in VRA section 2 cases, the Senate factors—on which the section 14028(e) factors are based—are *separate* from the racially-polarized-voting analysis. Under section 2, it is necessary but insufficient for plaintiffs to prove legally significant racially polarized voting and vote dilution. (*Johnson v. De Grandy* (1994) 512 U.S. 997, 1011.) Once plaintiffs have cleared those hurdles, they must also show that "under the totality of the circumstances," the electoral system "has the effect of diminishing or abridging the voting strength of the protected class." (*Voinovich v. Quilter* (1993) 507 U.S. 146, 156.)

The CVRA removed this secondary hurdle to liability, making it "probative, but not necessary." (§ 14028(e).) The statute did not, in incorporating federal law on racially polarized

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voting, redefine it to *include* the Senate factors.[10]

Thus, because there is no legally significant racially polarized voting or vote dilution, there is no reason for the Court to address the section 14028(e) factors. (AOB-49.)

III. The Judgment Renders the CVRA Unconstitutional as Applied to the Facts of This Case.

The judgment raises three constitutional concerns. (AOB-56-60.) Respondents try to brush them away by claiming that *Sanchez v. City of Modesto* and *Higginson v. Becerra* (9th Cir. 2019) 786 F.App'x 705 have "confirmed the CVRA passes constitutional muster." (RB-67-68.) But those cases, unlike this one, involved *facial* challenges to the statute.

Next, respondents contend that the trial court did not, "[a]s the Statement of Decision makes clear," unconstitutionally assume that Latino voters prefer only Latino candidates. (RB-68.) As explained above (Part II.B.1, *ante*), however, that is precisely what the decision shows.

As for the City's argument that the trial court has interpreted the CVRA to allow for liability even absent evidence of vote dilution (AOB-57-59), respondents have little to say. (RB-68-69.) They do not grapple with the federal cases holding that "influence" claims are non-justiciable and/or unconstitutional. (AOB-57-59.) Those courts have explained that no limiting

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[10] Respondents contend that the City's interpretation of section 14028(e) renders it meaningless. Not so. These qualitative factors could tip the scales in a case, unlike this one, in which there is limited quantitative evidence of voting behavior.

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principle separates a case like this one—brought ostensibly on behalf of a protected class accounting for just over 13% of the City's voters—and a case involving a protected class of just one person. "If 10% of the voters can 'swing' an election, perhaps so can 1% or 0.1%. A single voter is the logical limit." (*Illinois Legislative Redist. Comm'n v. LaPaille* (N.D.Ill. 1992) 786 F.Supp. 704, 716 (three-judge panel); see also *Arizona Minority Coal. Fair Redist. v. Arizona Indep. Redist. Comm'n* (D.Ariz. 2005) 366 F.Supp.2d 887, 906 ["'Influence cannot be clearly defined or statistically proved' and admits of no limiting principle"].)

Finally, respondents dismiss the City's charter-city argument on the ground that it was already "rejected" in *Jauregui*. (RB-69.) But *Jauregui* is distinguishable because the City of Palmdale did not challenge the trial court's findings of racially polarized voting and vote dilution on appeal. (226 Cal.App.4th at 788, 792, 808; AOB-60, fn.14.) Here, because those findings are legally erroneous, there is no basis for judicial interference with the City's right to self-governance.

IV. The Trial Court's Equal Protection Ruling Is Legally and Factually Erroneous.

The trial court committed legal error as to both the "disparate impact" and the "discriminatory intent" prongs of respondents' Equal Protection claim. (AOB-61-76.) Respondents' arguments to the contrary are unavailing.[11]

[11] Respondents do not dispute that, for purposes of their Equal Protection claim, the California and federal Constitutions are interpreted coextensively. (AOB-60.)

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A. The Judgment Demands Searching Review for Legal Error, not a Rubber Stamp.

Respondents insist that this Court must defer to the trial court's Equal Protection rulings because they are factual. (RB-44.) But the City is primarily challenging *legal* errors that are reviewed de novo: In reaching the determinations of disparate impact and discriminatory intent, the court applied the wrong standards and thus set the bar erroneously too low. (AOB-61-68; see *People v. McKee* (2012) 207 Cal.App.4th 1325, 1338; *Engquist v. Oregon Dept. of Agric.* (9th Cir. 2007) 478 F.3d 985, 992.)

To the extent this Court reviews any of the trial court's findings for substantial evidence, the "ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the whole record." (*Kuhn,* 22 Cal.App.4th at 1633.) Because this Court "was not created … merely to echo the determinations of the trial court" (*ibid.*), it does not, in its "search for substantial evidence," "blindly seize any evidence in support of the respondent in order to affirm the judgment." (*Carter v. CB Richard Ellis, Inc.* (2004) 122 Cal.App.4th 1313, 1328.) Rather, since "[r]eview of evidence in isolation can be misleading," the Court considers the "whole record"—it "may not consider only supporting evidence in isolation, disregarding all contradictory evidence." (*Rivard v. Bd. of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

B. The Trial Court Erred as a Matter of Law in Finding Discriminatory Impact.

The trial court erred as a matter of law when it found that Santa Monica's at-large election system had a disparate impact on

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minorities, because the court was unable to link the electoral system to any actual impact on minorities. (AOB-61-65.) Respondents assert that "disparate impact can be established in a variety of ways," and offer three theories for such impact here: vote dilution, the lack of successful minority candidates, and unresponsiveness to the minority community. (RB-69-71.) Only one of these asserted bases, vote dilution, is legally sufficient, and as a matter of law it was not established here.

1. Disparate Impact Requires a Showing of Vote Dilution.

In the context of Equal Protection challenges to voting systems, disparate impact means that "members [of the minority group] had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." (*White v. Regester* (1973) 412 U.S. 755, 766; see AOB-61.)

Respondents contend that vote dilution is only one possible species of disparate impact, citing *Washington v. Finlay* (4th Cir. 1981) 664 F.2d 913. (RB-70, 72-73.) But the very sentence they quote says precisely the *opposite*: "[Fifteenth and Fourteenth Amendment claims] are essentially congruent since, under either, the claim can *only* be established by proof (a) that vote dilution, as a special form of discriminatory effect, exists and (b) that it results from a racially discriminatory purpose chargeable to the state." (664 F.2d at 919, italics added.) Respondents similarly mis-cite *Buskey v. Oliver* (M.D.Ala. 1983) 565 F.Supp. 1473, for the proposition that disparate impact can take many forms (RB-

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74); that case did not even involve a constitutional claim.

Here, respondents failed to prove any dilution of minority voting strength resulting from Santa Monica's at-large system. The trial court never even mentioned vote dilution as a basis for its disparate-impact finding. (24AA10718, 24AA10725.)

Even if the trial court had reached this question, it could not have identified evidence sufficient to prove unconstitutional vote dilution. Courts have repeatedly held that an Equal Protection plaintiff, no less than a section 2 plaintiff, must prove that it is possible to draw a majority-minority district, which in this case is impossible. (AOB-61; see also, e.g., *Harding v. Cty. of Dallas* (N.D.Tex. 2018) 336 F.Supp.3d 677, 701; *Thompson v. Kemp* (N.D.Ga. 2018) 309 F.Supp.3d 1360, 1366; *Martinez v. Bush* (S.D.Fla. 2002) 234 F.Supp.2d 1275, 1336.)

The trial court's disparate-impact finding, by contrast, rests on the notion that a 30% "influence" district would provide Latino voters more opportunity to elect their candidates of choice. (24AA10706-10707.) Respondents defend that finding on two baseless grounds.

First, they suggest that Equal Protection standards were somehow modified by the Legislature's enactment of the CVRA. (RB-77.) The California Legislature may have relaxed the majority-minority-district requirement in drafting the *CVRA*, but that statute does not reduce respondents' burden under the *Constitution*.

Second, respondents cite a few decisions in which, they assert, courts have declined to impose the majority-minority

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requirement on constitutional claims. (RB-75-76.) One of those cases, *Broward Citizens for Fair Districts v. Broward County* (S.D.Fla. Apr. 3, 2012) 2012 WL 1110053, at *9, stands for precisely the *opposite* point; it holds that the plaintiffs' "fail[ure] to establish the *Gingles* factors" means that they also "failed to establish the discriminatory impact necessary to substantiate an Equal Protection claim." And in another decision cited by respondents, the court did not need to reach the question whether the first *Gingles* precondition applies to Equal Protection claims, because it was possible there to create *seven* majority-Latino districts. (*Perez v. Abbott* (W.D.Tex. 2017) 253 F.Supp.3d 864, 973.)

One of respondents' cases, *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, does squarely decide the question, albeit hastily, creating a circuit split that the Supreme Court has declined to resolve. (*Bartlett*, 556 U.S. at 20.) It seems unlikely, however, that the Court would side with the Ninth Circuit's decision in *Garza*. If an election system does not limit the ability of a minority group to elect candidates of its choice, then, by definition, it has caused no harm—regardless of whatever its architects may have intended. (See pp. 42-43, *ante*.)

In any event, respondents have not identified any cases in which courts were willing to relax the first *Gingles* precondition so far as to sanction a 30%-minority district. In *Garza* itself, for example, Latinos accounted for almost 40% of L.A. County's population, and it was possible to create two districts in which Latinos were a near-majority of eligible voters. (756 F.Supp.

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1298, 1320, 1328.) It is at least conceivable that a minority group in such a district could elect candidates of its choice; the same is not true here.

2. Purported Evidence of Governmental "Unresponsiveness" Alone Cannot Prove Disparate Impact Unless Linked to the Challenged Voting Structure.

Respondents argue that the trial court properly found disparate impact because City officials supposedly have been unresponsive to the needs of minority residents. (RB-70.) The City has vigorously disputed the veracity of such claims (e.g., 14AA5383-5384), but they are irrelevant in this appeal. (AOB-64.)

First, *no* court has held that a purported lack of governmental responsiveness alone, absent evidence of vote dilution, qualifies as a disparate impact. Courts instead hold that a lack of responsiveness can at most *corroborate* a finding of vote dilution. (See, e.g., *White*, 412 U.S. at 769 [treating an "insufficiently responsive" legislature as only one factor in a finding of vote dilution]; *Finlay*, 664 F.2d at 923 [treating unresponsiveness as "an element of [a] dilution claim"].)

Respondents' own cases (RB-70-71) confirm that lack of responsiveness is not even necessary, much less sufficient, to show disparate impact. In *Rogers v. Lodge* (1982) 458 U.S. 613, 625, fn.9, for example, the Court rejected the notion that "'proof of unresponsiveness' … is an *essential* element" of a constitutional claim, holding instead that "unresponsiveness is … only one of a

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number of circumstances a court should consider in determining whether discriminatory purpose may be inferred."

Second, respondents and the trial court have never explained how the purported unresponsiveness "results from" the City's voting system. (*Osburn v. Cox* (11th Cir. 2004) 369 F.3d 1283, 1288.) In *Clarke*, for example, the Sixth Circuit affirmed a judgment in favor of Cincinnati in part based on the absence of evidence that Cincinnati's election system *caused* disparities in wealth and educational attainment between white and minority voters. (40 F.3d at 814.) Here, similarly, the trial court did not marshal any evidence showing that similar disparities, or the placement of certain features of the landscape, such as the 10 Freeway, were *caused by* the at-large election system.

3. A Lack of Successful Minority Candidates Cannot, by Itself, Show Disparate Impact.

Respondents also assert that "the lack of electoral success of minority candidates" alone is sufficient to prove a disparate impact. (RB-70.) That is incorrect.

As an initial matter, the pattern would have to be the lack of success of *minority-preferred* candidates, not minority candidates. And such a pattern would need to be *caused by* the election system, rather than something else, such as the small size of the minority population. For example, in *Johnson v. DeSoto County Board of Commissioners* (11th Cir. 2000) 204 F.3d 1335, 1345, the court held that even if there were evidence of intent and impact, the plaintiffs nevertheless "failed to establish their constitutional claims because the record fails to show that the

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inequality of opportunity *results from* the county's current electoral system." (See also *LULAC v. Clements* (5th Cir. 1993) 999 F.2d 831, 854-855 (en banc) ["Absent evidence that minorities have been excluded from the political process, a 'lack of success at the polls' is not sufficient to trigger judicial intervention."].)

In support of the argument that the defeat of minority candidates alone gives rise to a constitutional claim, respondents and the trial court rely on *Bolden v. City of Mobile* (S.D.Ala. 1982) 542 F.Supp. 1050 and *Rogers*. (RB-70; 24AA10718.) But neither of those cases supports that argument.

In *Bolden*, African-American candidates enjoyed significant success immediately following the Civil War, but after a change to the electoral system in 1874, no African-American candidate was ever again elected. (542 F.Supp. at 1074, 1076.) This pattern—success cut short by an intentionally discriminatory change, followed by years of defeat—was integral to the finding of disparate impact.

In *Rogers*, the problem was not solely that African-American candidates had been unsuccessful—it was that they *should have* won, because African-Americans had "always made up a substantial majority of the population" and because "[t]here was also overwhelming evidence of bloc voting along racial lines." (458 U.S. at 623.)

In both *Bolden* and *Rogers*, then, there was evidence that minority voters, absent a dilutive electoral system, could elect candidates of their choice. Here, by contrast, there is no evidence, as in *Bolden*, that minority voters were able to elect candidates

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under a different electoral system, but were then frustrated by the Charter adopted in 1946. Nor is there evidence, as in *Rogers*, that minority voters ever made up a substantial majority of the population.

The evidence to which respondents point comes nowhere close to the evidence in cases like *Bolden* and *Rogers*. Respondents argue that the trial court correctly found disparate impact because (1) after the adoption of the 1946 Charter, no minority candidates were elected from the late 1940s through the 1960s, and (2) Vazquez lost his reelection bid after the Council's 1992 decision not to put districts on the ballot. (RB-33-34, 73.) But respondents have again failed to show any causal link between the at-large election system and these purported impacts.

Respondents never introduced evidence showing that minority candidates running in the decades after the Charter's adoption lost *because of* the City's electoral system. (AOB-63-64.) There is no evidence that those candidates were supported by minority voters, or that any minority group *should have* been able to elect candidates of its choice but was unable to for reasons other than small numbers. Respondents point to a list of Latino candidates who lost (RB-33, 85, fn.21), but that argument goes nowhere without the unconstitutional presumption that Latino voters must have preferred these candidates. (RB-33; see 7AA2378; 7AA2411.)

Similarly unpersuasive is respondents' argument that "the effects of the at-large system were felt immediately following Appellant maintaining that system in 1992," with the defeat of

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Vazquez. (RB-34.) Vazquez had already won under the same electoral system in 1990 and would win again in 2012 and 2016. The City is unaware of any case holding that an electoral system under which a minority candidate repeatedly won somehow also *caused* that same candidate to lose between those victories.

C. The Trial Court Legally Erred in Finding Discriminatory Intent.

This Court should review the purported evidence of discriminatory intent—newspaper articles, a videotape, and a commission report on at-large elections (RB-81-82)—de novo because all of it is cold-record evidence that this Court is in just as good a position as the trial court to evaluate. (See *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677; *Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co.* (1998) 68 Cal.App.4th 83, 89.)

Regardless of the standard of review, the record shows, at most, that the 1946 Freeholders and the 1992 Councilmembers were aware that at-large elections might possibly have a disparate impact on minority voting strength, although not necessarily in Santa Monica. (AOB-68-70.) And mere awareness of potential disparate impacts cannot, as a matter of law, establish discriminatory intent. (See *City of Mobile v. Bolden* (1980) 446 U.S. 55, 71, fn.17 ["if the District Court meant that the state legislature may be presumed to have 'intended' that there would be no Negro Commissioners, simply because that was a foreseeable consequence of at-large voting, it applied an incorrect legal standard"].)

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1. A Showing of Discriminatory Intent, Not Just Awareness of Possible Consequences, Is Required.

Courts have consistently held that mere awareness of a potentially disparate impact is not enough to show discriminatory intent. (AOB-66.) Respondents disagree with this case law, arguing that under the *Arlington Heights* framework, decision-makers' awareness of a potential impact *can* prove intent. (RB-84.) But respondents stretch *Arlington Heights* too far.

No case holds that awareness of a potentially disparate impact is sufficient, by itself, to establish intent. To the contrary, courts consistently hold the opposite. In *Personnel Administrator of Massachusetts. v. Feeney* (1979) 442 U.S. 256, 279, for example, the Supreme Court held that although lawmakers were aware that a hiring preference for veterans would benefit men, "nothing in the record demonstrate[d] that this preference for veterans was originally designed or subsequently re-enacted because it would accomplish the collateral goal of keeping women in a stereotypic and predefined place." Similarly, in *Crawford v. Board of Education* (1980) 113 Cal.App.3d 633, 645-647, this Court held a school board's awareness of racial disparities was insufficient to support a finding of discriminatory intent. As the Court in *Arlington Heights* put it, disparate impact is only a "starting point." (429 U.S. at 266.) To hold otherwise would eliminate the distinction between awareness and intent.

Contrary to respondents' suggestions (RB-83), conflating mere awareness with intent is a *legal error* reviewed de novo; it is

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not a question of weighing or interpreting evidence. (See, e.g., *Pahls v. Thomas* (10th Cir. 2013) 718 F.3d 1210, 1240 [reversing judgment because knowledge of "disparate treatment … is legally insufficient to establish viewpoint discrimination"].)

2. No Evidence Shows That the 1946 Freeholders Intentionally Discriminated.

The City has described volumes of record evidence demonstrating that the Freeholders proposed the new Charter with the goal of *increasing* minority voting strength, not limiting it. (AOB-68-76.) Tellingly, respondents do not even address, let alone dispute, the following evidence:

- The Charter *expanded* electoral opportunities for minorities by eliminating designated posts and increasing the size of the governing body from three to seven members. (AOB-69.)
- The Charter included an *anti*-discrimination provision for public employees. (AOB-71.)
- Latino, African-American, and Jewish leaders publicly supported the Charter and advocated for its adoption. This included Reverend Carter, the president of the local NAACP chapter and the preeminent local civil-rights leader from the 1940s through the 1960s. (AOB-69; 25AA11223.)
- Multiple Freeholders were members of the Interracial Progress Committee, which set out to ensure "common

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appreciation of the worth of each individual regardless of racial origin," and one belonged to the NAACP. (AOB-68.)[12]

- No minority residents, minority groups, or members of the Interracial Progress Committee opposed the Charter. (AOB-70.) Nor did any of them urge the adoption of districts. (AOB-74.)
- Districts would have harmed minority voters in 1946, packing small minority groups into overwhelmingly white districts. (AOB-74.)

These undisputed facts destroy respondents' narrative that everyone in Santa Monica in 1946, the Freeholders included, knew the Charter would harm minority groups.

Respondents would have this Court ignore the full record and instead focus narrowly on a handful of out-of-context newspaper clippings. (RB-82-83.) Critically, however, respondents do not dispute that *all* of the newspaper advertisements on which they rely for critiques of the Charter (e.g., 25AA10890, 25AA11005) were placed by the Anti-Charter Committee. (RB-81-82.) Respondents also concede, by not disputing, that this Committee was not advocating for minorities, was not supporting minority voting rights, and was not urging the adoption of districts. (AOB-72-73.) Instead, it is undisputed that the Committee was composed of anonymous businessmen who

[12] That the Freeholders were "all white" (RB-36) says nothing about their intent. (AOB-68.) Nor is the Freeholders' racial composition surprising, since more than 95% of the City's population was white in 1946. (28AA12379-12380.)

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wished to maintain the status quo—a three-Commissioner system elected at-large to designated posts, which indisputably was *worse* for minorities than the Charter. (RB-82, 89; see AOB-72-73; 25AA10890.)

In light of the whole record, the Anti-Charter Committee's advertisements cannot amount to substantial evidence that the *Freeholders* intended to discriminate against minorities by adopting the new Charter. (See *In re HB* (2008) 161 Cal.App.4th 115, 120 ["A judgment is not supported by substantial evidence if it is based solely upon unreasonable inferences, speculation or conjecture."].)

Respondents also highlight Dr. Kousser's statistical correlation between voting on the Charter and voting on Proposition 11. (RB-83.) But respondents have no answer to the fact that Dr. Kousser's only source on Proposition 11 warned *against* drawing any conclusion that it was "a pure gauge of racial attitudes," apart from asserting that Dr. Kousser (without any basis) believed otherwise. (AOB-73; RB-83; RT4686:19-4690:24, RT7667:27-7682:7.) The statistical evidence also says nothing about the views of the *Freeholders*, who were the relevant decision-makers, according to respondents and the trial court. As for respondents' suggestion that a vote for the Charter was a vote for racism (RB-36), this makes no sense given that prominent minorities, minority groups, and members of the Interracial Progress Committee all publicly *favored* the Charter, which indisputably expanded minority electoral opportunities.

Respondents suggest that anything other than blind

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deference to their interpretations and inferences from the evidence would be "legal error." (RB-88.) But under the substantial-evidence standard, any "inferences must be 'a product of logic and reason' and 'must rest on the evidence'; inferences that are the result of mere speculation or conjecture cannot support a finding." (*Kasparian v. Cty. of L.A.* (1995) 38 Cal.App.4th 242, 260.)

With that in mind, consider the inference that respondents draw from the article titled "New Charter Aids Racial Minorities." (Reply-Addendum-4 [28AA12404]; RB-89-90.) This article reports on a meeting where a Freeholder explained to NAACP members that the Charter would increase minority electoral opportunities by "two and a half times over the present charter." (*Ibid*.) Although the article does not mention districts, and although it is undisputed that several NAACP members publicly advocated for the Charter, respondents and Dr. Kousser somehow interpreted the article to say "that the minorities themselves recognize that the at-large system was not going to make them better off … and if they really wanted something to make them better off, they could have a district system." (RT3482:24-3483:1.) Respondents do not dispute that Dr. Kousser literally made that up. (AOB-69, fn.18.) No deference is warranted to such unsupported, illogical inferences.

Under the substantial-evidence standard, the "*whole record*" precludes any "*reasonable* trier of fact" from concluding that the 1946 Freeholders acted with discriminatory intent. (*Kuhn*, 22 Cal.App.4th at 1633; see also *Joaquin v. City of L.A.* (2012) 202

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Cal.App.4th 1207, 1218 [no substantial evidence if finding is "unreasonable when viewed in light of the whole record"].) Only by considering "supporting evidence in isolation," drawing illogical inferences from it, and then "disregarding all contradictory evidence," could the trial court possibly conclude that the Freeholders adopted the Charter with discriminatory intent. (*Rivard*, 164 Cal.App.3d at 412.)

As a fallback, respondents offer a theory of what might be called racial contagion—that there was a prevailing sentiment of racial animus in 1946, and that the Freeholders must have responded to it. (RB-82, fn.19.) But there is no substantial evidence of racial animus in Santa Monica in 1946, and even if there were, respondents would still need to show that the Freeholders adopted the Charter to be "responsive" to those in the community who expressed racial animus. (See, e.g., *Pac. Shores Properties, LLC v. City of Newport Beach* (9th Cir. 2013) 730 F.3d 1142, 1163, fn.26.)

Nothing in the trial court's decision connects supposed community animus to the Charter's adoption. (24AA10717-10720.) Nor did the trial court make any finding that community animus influenced the Freeholders; the court did not even identify any group with discriminatory motives in 1946 that might have influenced the Freeholders, let alone show that the entire community was bent on discrimination.

Respondents also argue that it is "absurd" to say that at-large elections would have been better for Santa Monica's minorities than districts in 1946. (RB-90.) But at-large elections

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are not per se discriminatory, just as districts are not necessarily beneficial for minorities. (AOB-80; see also, e.g., *Romero v. City of Pomona* (C.D.Cal. 1987) 665 F.Supp. 853, 857 ["The Court finds that it is questionable and speculative as to whether a district system would improve the electability of minority candidates in comparison to the current at-large system."].) Respondents ignore the many districts that courts have struck down for "cracking and packing" minority voters, diluting their voting strength. (E.g., *Perez*, 253 F.Supp.3d at 962.)

3. No Evidence Shows Discriminatory Intent in 1992.

Respondents' proof of discriminatory intent in 1992 reduces to two pieces of evidence: a video from a 1992 Council hearing and the Charter Review Commission's report. (RB-82.) At most, that evidence shows awareness of a potential disparate impact, not an affirmative intent to bring about a discriminatory result. (AOB-76-82.)

a. The 1992 Council Video Does Not Show Discriminatory Intent.

Respondents place significant weight on a video of the 1992 Council deliberating on whether to put an alternative electoral scheme on the ballot. (RA179.) The City invites the Court to watch the video for itself. (See *Scott v. Harris* (2007) 550 U.S. 372, 380-381 [courts, viewing "the facts in the light depicted by the videotape," must not accept theories that are "contradicted by the record"].) Because the video constitutes cold-record, documentary evidence, this Court is in the "same position" as the

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district court "in interpreting" the video and can review it de novo. (*People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 79; accord *In re Avena* (1996) 12 Cal.4th 694, 710.)

Respondents focus on Councilmember Zane, arguing that he "wanted to maintain the power of his political group [SMRR] to continue placing low-cost housing in the Pico Neighborhood, and diluting the votes of its minority residents was the vehicle to accomplish that goal." (RB-38, fn.6; see also RB-88-89.) Zane's remarks make clear, however, that he was interested in avoiding the downsides of district elections, especially the risk that it would promote "parochial" politics over citywide solutions. (RT3377:14-3382:21.)

Case law makes clear that much more is needed to show that a decision-maker acted with discriminatory intent. For example, in *Spurlock v. Fox* (6th Cir. 2013) 716 F.3d 383, the court addressed a zoning ordinance that unwound a longstanding desegregation plan. The court did not find discriminatory intent even though one legislator said that "racial isolation" was "a small price to pay" for improving schools—the statement was "simply a candid expression of a policymaker's cost-benefit judgment," which showed only "awareness of a disparate impact" but not intent. (*Id.* at 400.) There is even less evidence here than in *Spurlock*, and the same result should follow.

Aware from the outset of this case that there is no evidence of racial animus, respondents have argued that Zane's remarks fit within the rubric of *Garza*. (RB-89.) *Garza* is an unusual case holding that elected officials can act with discriminatory intent,

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even absent evidence of animus, if they maintain their seats by diluting the voting strength of a minority group. (918 F.2d at 771.) As the City has explained, this case is a poor fit with *Garza* because Zane did not—and never planned to—seek reelection. (AOB-67-68; RA179.)

Respondents attempt to expand *Garza* by arguing that Zane was attempting to preserve his *political group's* power at the expense of minority voting strength. (RB-89.)[13] But this argument has no factual or legal support.

Zane did not believe that he was choosing affordable housing, which SMRR championed, over minority representation, as respondents allege. He made clear that the City "need[ed] a system to choose both." (RT3380:16-17.) Zane explained that he was "sympathetic with some of the views of the district elections idea, but I think district elections has flaws, and the flaws are avoidable. They're avoidable by adopting a hybrid system, and the hybrid system that I would prefer is a hybrid system that would have six districts and three at-large." (RT3381:1-9.) That system, in Zane's view, "blends the best of both the at large and the district and minimizes the deficiencies of both." (RT3382:13-

[13] Respondents do not contest that this "political group," SMRR, has been a longtime advocate of minority voting rights and has had many minorities serve on its steering committee, including respondent Loya herself. (AOB-78, fn.20.) The Charter Review Commission had "no reason to believe" that SMRR and similar groups engaged in slate politics "could not adapt comfortably to the district format." (25AA10938.)

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16.) Unlike in *Garza*, then, there was no direct conflict between personal (or even "group") interests and Latino voting rights.

Respondents insist that Zane's preference for a hybrid system is irrelevant, because the videotape "showed that everyone agreed 7 districts, not a hybrid system with fewer districts, were critical to minority representation." (RB-88.) So, to be clear, respondents' most "robust" evidence of intentional discrimination in this case (RB-34) is that a single Councilmember believed that six districts, rather than seven, would enhance minority voting rights *and* advance citywide interests like affordable housing. If that sort of minor political disagreement amounts to intentional discrimination, then *any* political decision that even arguably has some effect on minorities would, too.

b. The Charter Review Commission's Report Does Not Show Discriminatory Intent.

Respondents also argue that the Charter Review Commission's report proves that the Council knew at-large elections would have a discriminatory impact on minority voters. (RB-83.) But the report shows, at most, that Council members were aware of disparate impacts that *might* flow from at-large elections. (AOB-76-77.)

Courts have rejected this sort of evidence when used to show discriminatory intent. (E.g., *AFL-CIO v. State of Washington* (9th Cir. 1985) 770 F.2d 1401, 1406 [study showing that "State's practice of setting salaries in reliance on market rates create[d] a sex-based wage disparity" was not enough to support inference

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that State was "motivated by impermissible sex-based considerations in setting salaries"]; accord *Rodriguez v. Pataki* (S.D.N.Y. 2004) 308 F.Supp.2d 346, 381 [mere "consciousness of minority groups" in memo concerning districts did not show discriminatory intent as a matter of law].)

The Court should similarly reject the report here as evidence of discriminatory intent. The report repeatedly emphasizes its own shortcomings, including the Commission's limited time and resources (25AA10918), the tentativeness of its conclusion (25AA10918, 25AA10922), and the need for further investigation (25AA10918-10919). The report also raised a host of questions about the merits of districted elections, questioning whether they would be effective and noting their "disempowering side," which "[t]he majority of the Commission believed … was an unacceptable trade-off." (AOB-77; 25AA10915.)

In short, the report notes that disparate impacts might flow from at-large elections, but also makes clear that the Commissioners had no idea what the "best route" to solve this potential problem might be, leading them to offer only a "tentative conclusion." (25AA10919.) Although respondents insist that the Council intentionally discriminated against minority voters by not putting the obvious panacea of districts on the ballot, even a majority of the Commissioners themselves rejected that "remedy." (25AA10915.) The trial court erred as a matter of law in giving the report conclusive weight.

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D. The 2002 Ballot Measure Militates Against Any Findings of Disparate Impact and Intent.

Respondents downplay the importance of what happened ten years *after* the Council declined to put districts on the ballot, supposedly intending thereby to discriminate against minority voters and causing a disparate impact. In 2002, voters—including 82% of Latino voters—overwhelmingly rejected a ballot measure calling for the replacement of at-large elections with districts. (AOB-65.)

Respondents are left to speculate—based largely on their expert's survey, taken in *2016*—that voters would have done precisely the opposite if they had been given the same choice in 1992. (RB-79.) Respondents also argue that the 2002 ballot measure was "packed with a smorgasbord of unpopular provisions unrelated to district elections," and it was "those other provisions that opponents attacked and ultimately led to its defeat." (RB-79-80.) Ironically, the evidence respondents cite on this point—the 2002 ballot pamphlet arguments "against" the switch to districted elections, put forth by, among others, the local NAACP president—echoes the same *non-discriminatory* reasons that the Council had embraced in 1992, such as the fact that district elections "would relieve six council members from having to listen to you—or your neighborhood," would "[d]ivide the city, pitting one neighborhood against another," and would "take[] away your choice, while decreasing your voice." (RA190.)

At the very least, the 2002 ballot measure militates against any finding of disparate impact or discriminatory intent from the

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Council's decision in 1992. (Cf. *Cotton v. Fordice* (5th Cir. 1988) 157 F.3d 388, 391 [legislature "removed the discriminatory taint associated with" a provision by amending it twice].)

V. The Trial Court Impermissibly Adopted Respondents' Proposed Remedy Without the Public Input Required by Section 10010.

Elections Code section 10010(a) requires a series of public hearings before a city may adopt a districting map. There were no hearings here, so the public was not given an opportunity "to provide input regarding the composition of the districts" (§ 10010(a)(1))—either those proposed by respondents or any others. (AOB-82-83.)

Respondents do not dispute that section 10010 was never satisfied here. But they lay the blame for the lack of hearings on the City, contending that the City "refused to engage" in the section 10010 "process, despite being given several opportunities to do so." (RB-93-94.) Not so. The City consistently argued that if the trial court ultimately entered judgment in favor of respondents, the court should order the City to comply with section 10010—which the court never did. (E.g., 23AA10185-10186, 24AA10458-10459, 24AA10522-10523, RT9602:15-9607:28.)

That suggested remedy followed the language of the statute, which requires public meetings when a court has "imposed" a change to district-based elections. (§ 10010(c).) The trial court did not do so until it entered judgment. Before that, its tentative ruling was not binding, and the City was under no obligation to

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undertake a public-outreach process that might ultimately have been unnecessary and could have led to considerable voter confusion. (Cal. Rules of Court, rule 3.1590(b); *Phillips v. Phillips* (1953) 41 Cal.2d 869, 874 ["Until a judgment is entered, [a tentative decision] is not effectual for any purpose"].)

Respondents argue that this reading of the statute "would lead to absurd results," because a CVRA defendant might "refuse[] to conduct the public meetings contemplated in section 10010," leaving the trial court "powerless to implement any remedy." (RB-94-95.) Not true. A court can simply order a defendant to adopt district-based elections and give it adequate time to follow section 10010—precisely what the City proposed in the first place. (23AA10185-10186.) The trial court elected not to do that here, instead ordering the City to adopt respondents' proposed district map, and then concluding, "We will let it run and see where it goes in the Court of Appeal." (RT9939:11-12.)

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VI. Conclusion

The Court should reverse the judgment and enter judgment in favor of the City on both causes of action. Alternatively, the Court should reverse and remand for application of the correct legal standards to both the CVRA and Equal Protection claims. At the very least, the Court should reverse in part and remand with instructions to order the City to comply with section 10010.

DATED: January 21, 2020

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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CERTIFICATION OF WORD COUNT

Pursuant to rule 8.204(c)(1) of the California Rules of Court, the undersigned hereby certifies that this opening brief contains 13,979 words, as counted by the Microsoft Word word-processing program, excluding the tables, this certificate, the verification, and the signature blocks.

DATED: January 21, 2020

Kahn A. Scolnick

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Reply Addendum (CRC 8.204(d))

The six pages in this addendum are clearer versions of certain documents included in Appellant's Appendix (pages 28AA12401-12404, 28AA12411, & 28AA12413).

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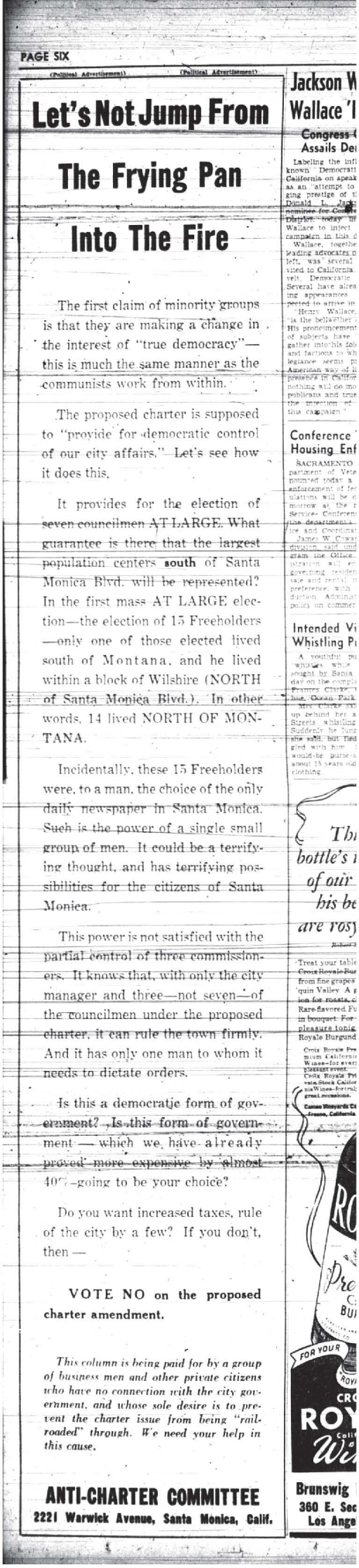

PAGE SIX

(Political Advertisement) (Political Advertisement)

Let's Not Jump From The Frying Pan Into The Fire

The first claim of minority groups is that they are making a change in the interest of "true democracy"—this is much the same manner as the communists work from within.

The proposed charter is supposed to "provide for democratic control of our city affairs." Let's see how it does this.

It provides for the election of seven councilmen AT LARGE. What guarantee is there that the largest population centers **south** of Santa Monica Blvd. will be represented? In the first mass AT LARGE election—the election of 15 Freeholders—only one of those elected lived south of Montana, and he lived within a block of Wilshire (NORTH of Santa Monica Blvd.). In other words, 14 lived NORTH OF MONTANA.

Incidentally, these 15 Freeholders were, to a man, the choice of the only daily newspaper in Santa Monica. Such is the power of a single small group of men. It could be a terrifying thought, and has terrifying possibilities for the citizens of Santa Monica.

This power is not satisfied with the partial control of three commissioners. It knows that, with only the city manager and three—not seven—of the councilmen under the proposed charter, it can rule the town firmly. And it has only one man to whom it needs to dictate orders.

Is this a democratic form of government? Is this form of government — which we have already proved more expensive by almost 40%—going to be your choice?

Do you want increased taxes, rule of the city by a few? If you don't, then —

VOTE NO on the proposed charter amendment.

This column is being paid for by a group of business men and other private citizens who have no connection with the city government, and whose sole desire is to prevent the charter issue from being "railroaded" through. We need your help in this cause.

ANTI-CHARTER COMMITTEE
2221 Warwick Avenue, Santa Monica, Calif.

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Trial Exhibit 1816_459

Document received by the CA 2nd District Court of Appeal.

Reply Addendum-1
(also 28AA12401)

A. Gambol Leer Returns To Find Charter Up For Barter

By A. GAMBOL LEER

IT'S BEEN a long, long time, folks, but I'm back again in Santa Monica, and it certainly seems good to be home. The old familiar stamping grounds are best after all, and it's particularly nice to find that the old town hasn't changed very much. It seems to be harder for the boys to operate, but they're still able to eat their steaks and chops. They've even developed a certain amount of civic pride and it's quite refreshing to hear their critical analyses of our present charter and the one that's to be voted on next month.

For instance, nothing could be more inspiring to a student of civic affairs, such as I, than to hear Charlie, Don or Gordon sum up the pros and cons with the remark: "Well, we done OK as we was and I don't see no reason for any change."

That settles it, and the conversation turns to business matters, such as when the spot under the roller coaster can open again and whether starting the new room upstairs over the steak and chop house will cause trouble. As Milt says: "If it ain't one thing, it's another," and so they build up the pot for another political campaign.

It's getting tiresome though, according to Charlie and Don. "Here that guy Dike put the bite on us for the election last Fall and now he's back again after more. Wish he'd stop tuning in on our frequency."

But there is a spirit of cooperation that's lovely to the eye (though not to the purse), and for the first time you can see all the boys around Pier Avenue and Second and Broadway really working together. They are unanimous, however, on one thing. "We'll vote his way; we'll put up the money for his campaign against the new charter and we'll talk it up with the boys. That's OK. But we don't have to listen to him."

And they walk away from Dike.

I'll be back Monday with a little piece about garbage.

Bay Realty Board Approves Charter

Speakers Say Passage Means Better City

Adoption of the proposed council-manager form of government for Santa Monica was recommended by members of the Santa Monica Bay District Realty Board yesterday noon as the climax of an extended debate on the charter issue and its importance to the future development of the city.

Proposed by Charles Ashford, president of the Citizens Charter Committee and a past president of the Realty Board, the charter change endorsement was supported strongly by Albert Leonard, another past president of the organization, who termed the election "the last opportunity in our lifetime" for the modernization of Santa Monica's city government.

Financiers Watching

The eyes of many Southern California financiers are on Santa Monica," Leonard asserted. "I am sure the election will have a very direct bearing on their intentions in regard to future developments here."

A proposal by Samuel Greenlee and M. B. Rapp that action on the motion be delayed until after a speaker for the anticharter committee had been heard by the group was voted down after Leonard had told fellow board members that modern city government, improved play facilities and more hotels were, in the order mentioned, Santa Monica's greatest needs.

Koch Going East

Board members heard a detailed report from Ashford and Mrs. Lena L. Dunn on the state convention which they attended in company with J. Ray Burke, board president, in Sacramento last week.

The realtors also were advised that Stanley Koch would represent the Santa Monica board at the national convention in Atlantic City November 10. Koch said he would make the trip in connection with business matters requiring his presence in Kansas City, Chicago, Detroit and New York within the next few weeks.

Industrial Employment Shows Slight Decline

SACRAMENTO (AP) — Industrial employment slackened during September, Paul Scharrenberg, State Director of Industrial Relations, reported today. He estimated the factory worker total down from 512,000 in August to 509,400, attributing the decrease to seasonal retarding in canning operations, the August-September strike, decline in shipyard activities and the meat shortage.

White Population Total Here 64,415

Government Releases SM Census Breakdown

The white population of Santa Monica increased 24.6 percent between April 1, 1940 and July 1, 1946, and the nonwhite population increased 89 percent, the United States Bureau of Census reported today.

A breakdown of figures compiled in the special census of last July showed a total population in Santa Monica of 67,473, an increase of 26.1 percent over the 53,500 reported in 1940. In 1946 there are 64,415 white residents, and 3058 comprising the total of other races.

The number of occupied dwelling units in Santa Monica was 18,025 on April 1, 1940, and on July 1 of this year census tabulators reported the figure had increased to 22,740 occupied units. This is an increase of 26 percent. The population per dwelling unit remained the same, at an average of 2.97.

The figures were released by J. C. Capt, director of the Census Bureau, Washington, D. C.

Cancer Research Fund At UC Given $592,065

BERKELEY (U.P.)—A total of $657,960.78 in gifts, including $592,065 for cancer research, have been received by the University of California, the Board of Regents announced today.

Cafe Blaze Is Latest Outrage In Jerusalem

JERUSALEM (U.P.) — A Jewish-owned luxury cafe was set ablaze today by unidentified persons and the incident reportedly touched off an outbreak of violent reprisals.

Old Fair Building Accepted By U.N.

NEW YORK (AP)—The City of New York made its big bid today to become the permanent home of the United Nations while San Francisco prepared to renew its efforts to establish the world capital on the West Coast.

As Mayor William O'Dwyer formally transferred a 1939-40 World's Fair building to the United Nations, he announced that the city had offered a portion of Flushing Meadow Park to the U.N. for its permanent home.

In a colorful ceremony, O'Dwyer handed to U.N. Secretary-General Trygve Lie the keys to the fair's Aviation Building, the United Nations Assembly Hall in which the General Assembly will open next Wednesday.

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Turn To Page 7

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Document received by the CA 2nd District Court of Appeal.

Reply Addendum-2 (also 28AA12402)

(Political Advertisement) (Political Advertisement)

Topeka, Kansas, Likes Commission Form of Government

NOTE: Topeka has a population of 68,000. It has a tax rate (adjusted to 100% Basis of Assessment) of $13.30. It has the low gross and long term debt of $909,000 (end of 1946). Here is what three civic leaders say:

"Dear Mr. Sanderson:

I have your letter of October 15 in which you make inquiry concerning the city manager-council form of government which you understand is in effect in Topeka.

Topeka does not have a city manager-council form of government, but the three-man commission form. So far as I am able to observe, the system has worked very satisfactorily.

Sincerely yours,

Arthur Capper
United States Senate
Washington, D. C."

"Dear Mr. Sanderson:

Topeka overwhelmingly approves the municipal type of government we are getting. You, of course, realize that any type or system would not be popular if you did not have good men in office, but I think the commission type comes nearer being fool proof than most any other and of course it is not as difficult to get good men under this system of government.

I hope this is the information you want. Anyway I have written you sincerely of our conviction of this city's government.

Very cordially yours,

Oscar S. Stauffer, President
Stauffer Publications
Topeka, Kansas"

"Dear Mr. Sanderson:

Stanley Stauffer, our City Hall Reporter for the Topeka State Journal, and a son of Oscar Stauffer, handed me a few minutes ago your letter of October 15th. He asked me to forward to you the information you have requested. I shall do the very best that I can for you.

Yes, Topeka, Kansas, does operate under the "Commission" Form of City Government. It is my candid opinion that Topekans are almost unanimous in their approval of this form of government for our Capitol City. We have five elective city officials who have terms of four years each. Our next election comes in April 1947. Our Commission consists of: Mayor Frank J. Warren, who is chairman of the Commission and has as his special department of service the Police Department, the Fire Department (both departments operate under our civil service law); the legal department and the Municipal Airport.

Our Street Commissioner, Mr. William A. Lawson, is also vice chairman of the City Commission (elected by members of the Commission).

Our Water Commissioner is Mr. Lloyd B. Smith. Our Park Commissioner is Mr. Harry C. Snyder. Our Finance Commissioner is Mr. J. Glen Davis. Under him is the City Auditor and City Treasurer and City Clerk.

Each Commissioner is responsible for the activities in his own Department. He may ask help and advice from the Commission as a whole; or, he may be questioned at any time by the whole Commission. We have a 5-member City Aviation Commission that is appointed by the Mayor and approved by other members of the Commission. In fact, that is the way all appointments are made—first, by the Commissioner under whose department the work is to be done and then is approved by the other four members of the City Commission.

We have a City-County Health Department. At the head of it is our City-County Health Officer. He was selected by a City-County Board of Health consisting of eleven members. The Board of Health recommended his appointment and the City Commission approved it.

The manager of our Municipal Airport was recommended to the Mayor by the Aviation Commission. The Mayor, in turn, presented his name before the City Commission for its approval. The Chief of Police and the Fire Chief are both appointed by the Mayor and are approved by action of the Commission.

The Mayor's secretary is secretary of the Aviation Commission and also of the City-County Board of Health. Our Health Program is attracting nation-wide attention and interest. Our City-County Health Officer, Dr. D. D. Carr, came to us from Salt Lake City. He was especially trained in the field of Public Health. Our Board of Health: Four doctors recommended by the County Medical Society; four laymen appointed by the Mayor, and all eight approved by the City Commission. Three members were recommended by the County Commissioners and were approved by our City Commission.

Regular City Commission meetings, open to the public, are held every Tuesday morning from 9:30 to about 11:15. Special meetings are held from time to time as they are needed.

We like our form of City Government.

Very truly yours,

Ray D. Hodgell, Secretary
The City of Topeka, Kansas"

This column is being paid for by a group of business men and other private citizens who have no connection with the city government, and whose sole desire is to prevent the charter issue from being "railroaded" through. We need your help in this cause.

ANTI-CHARTER COMMITTEE
2221 Warwick Avenue, Santa Monica, Calif.

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Reply Addendum-3
(also 28AA12403)

Trial Exhibit 1816_470

EDITORIAL

Nailing One Falsehood Among Many

In an attempt to discredit the Evening Outlook, Commissioner D. C. Freeman has made a statement that this newspaper charges the highest rate for city printing of any newspaper in California. This is false. The advertising rate of this newspaper for city printing is $1 per inch as compared with $1.26 in Glendale, $1.20 in Burbank, $1.25 in Pasadena, 98 cents in Alhambra, $1 in Long Beach, $1.08 in South Pasadena; $1.15 in Beverly Hills, $1 in Santa Barbara, $2.08 in Ventura.

On the basis of circulation, the advertising rate of the Evening Outlook for city printing is among the lowest in Southern California.

The figures quoted may be easily verified by inquiry to the newspapers in question.

This is only one minor and easily corrected falsehood among the many which have been put out by Commissioner Freeman and the Anti-Charter Committee. In a recent advertisement the Anti-Charter Committee made these statements:

(The new charter) "also authorizes an increase of 300 employes over the present charter. The proposed charter also provides for the changing of 252 positions in labor classifications from Civil Service to political appointive positions. . . . It is conservatively estimated that the proposed charter would cost the citizens of Santa Monica each year a very minimum of $305,000 more than the present city government."

Every one of those statements is completely false and absurd. There is absolutely nothing in the new charter which would justify the claim that it would add 300 employes to the city payroll or change 252 positions from Civil Service to political appointive positions. As for the estimate that the new charter would increase the cost of government in Santa Monica by "a very minimum of $305,000," this is typical Freeman hocus-pocus, like his crystal-ball prophecy that adoption of the new charter will be followed by annexation to Los Angeles!

The council-manager form of government has brought about reduced government costs in hundreds of American cities which have adopted it. It may be expected to do so in Santa Monica. The whole campaign against the new charter has been one of reckless falsehood and misrepresentation, reflecting the desperation of men who want to keep their seats on the gravy-train and who have no sound argument to make for standing in the way of civic progress.

Hired Outsiders Flay New Charter

Proponents Barred As City Employes Meet

At a closed meeting arranged by anticharter forces which carefully excluded any representative of the freeholders, about 200 out of 735 city employes last night heard a number of speakers describe the dark disasters which will fall upon Santa Monica and especially on its City Hall employes if the new charter is adopted.

Two of the principal speakers were hired and others are on the present city payroll. A request made by the Citizens Charter Committee that the employes hear both sides had been denied, and there was no one present to answer the attacks on the charter made by the opposition.

LA Lawyer Speaks

D. L. DiVicchio, a Los Angeles attorney who apparently had never heard how Civil Service has been administered in Santa Monica, told the 200 city employes gathered in the Ocean Park Auditorium they could be robbed of their Civil Service rights under the proposed new city charter.

Introduced by James Pinkerton, who conducted the meeting, DiVicchio, one-time deputy district attorney, declared, "I am not intimating that Civil Service will be abused if the new charter is approved, but I do say that it affords the opportunity for one in power, politically inclined, to use the charter for his

Turn To Page 3 Column 6

Increased Bread Cost Hinted In Washington

WASHINGTON (U.P.)—Housewives were warned today to brace themselves for a new hike in the family food budget—this time in the cost of bread and rolls. The Agriculture Department yesterday opened the door to bread-price increases when

New Charter Aids Racial Minorities

Mrs. Cornett Tells Group Of Benefits

Santa Monica members of the National Association for the Advancement of Colored People, meeting last night at the African Methodist Episcopal Church, 19th Street and Michigan Avenue, with Frank Barnes acting as chairman, heard Mrs. Jean Leslie Cornett, secretary of the Board of Freeholders, explain various provisions of the new charter proposal. She dealt particularly with the Civil Service provisions, fair employment clause and the right of employes to petition collectively.

Admitting that the proposed charter is not perfect in every respect, Mrs. Cornett pointed out that the opportunity for representation in minority groups has been increased two and a half times over the present charter by expansion of the City Council from three to seven members.

Finance Commissioner D. C. Freeman, appearing unexpectedly at the meeting, was given an opportunity to speak. The Commissioner gave an account of "his stewardship" and made an impassioned plea for continuance of the present form of city government.

Marine Morale In China High, General Reports

SAN FRANCISCO (U.P.)—Morale of Marine Corps regulars in China is "extremely high," Gen. Alexander A. Vandergrift, Marine Corps Commandant, said today in his return from a two-week tour of Far East bases.

Navy Captain On Duck Trip Shot To Death

SAN DIEGO (U.P.)—Capt. Kenneth E. Loman, USN, was shot and killed today while duck hunting at Lake

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Document received by the CA 2nd District Court of Appeal.

Reply Addendum-4
(also 28AA12404)

Trial Exhibit 1816_477

Here's Why The Council-Manager Form Of City Government Will Be Adopted

On December 5, 1945, Santa Monicans voted to elect 15 freeholders to draft a new charter. This is positive evidence that Santa Monicans realize that a change in city government is needed—that's why they voted almost five to one to elect a board of freeholders—7123 votes for the freeholders to 1577 opposed.

Santa Monicans realize that the Council-Manager plan will give Santa Monica a very strong democratic form of government with much greater efficiency and economy of operation.

Santa Monicans realize that the present three-headed form of city government with three commissioners making the laws and also enforcing the law is not a healthy condition.

Santa Monicans are also aware of the fact that the present opposition against the proposed new charter comes from city officials and other riders on the local gravy wagon.

The truth is that the present form of city government can't agree on a policy of civic improvement or find funds for it out of the huge sums of money wasted by the inefficient City Hall bureaucracy.

Santa Monicans demand that our city must "go ahead" as have hundreds of other communities throughout the nation that have adopted the Council-Manager form of city government.

Santa Monicans know what they want and they'll get it by voting "yes" on the charter at the polls tomorrow.

The Following Citizens Urge You To Vote "YES" On The New Charter

Craig Rice
Dr. and Mrs. Franklin S. Pearley
Miss E. Armitage
F. O. Balle
F. W. Bedford
Howard S. Brode
J. Stanley Brode
T. N. Carver
Herbert K. Cheetham
Wm. E. Clarke
Jack Cooper
F. J. Dudley
Harry O. Evans
Wm. H. Fuller
Arthur F. Giroux
Dan'l F. Graham, Ph.D.
J. F. Hodgson
Clement J. Hogg
Chas. E. Hourigan
Payson D. Marshall
Wm. W. Mercker
John Hall
Gerald H. Miller
George E. Peck
Wallace H. Pierson
Downey A. Price
Richard Reid
Lloyd Strickland
R. Wm. Weeks
Fitzhugh White
Mrs. Archibald Erskine Kidd
Mr. and Mrs. O. E. Hilbrand
Mr. and Mrs. C. S. Mullins
Mr. and Mrs. John Yin
Mr. and Mrs. Ted Hanson

M. Felix Werner
O. Robert Smith
Dr. Gilbert Steingart
Simon Kimmel
Perry Kane
William L. Raun
Dr. Cecil B. Dickinson
Dr. Elmer C. Sandmeyer
Harry Goodman
Leon Rouse, M.D.
Barbara J. Hilbrand
W. J. Vos
Mr. and Mrs. C. B. Freeman
H. L. Bewley
Roger B. Marshall
Charles R. Hawkins
William A. Morse
Kenneth A. Mitchell
Mr. and Mrs. Ernest Hawkhorn
C. A. Dalzell
Thomas M. McCarthy
Russell H. Hart
Robert Hillinger
Earl Hillinger
A. C. Quandt, Jr.
Thomas L. Fisher
Mr. and Mrs. Harvey D. Wilson
Richard Stewart
Edward Altman
H. C. Renshey
Frank Hall
Thomas J. Clyne
David D. Morris
Eric Wilson
Ralph Lamb
Harry F. Clark

Wilmer Morby
Howard A. Wilson
Mrs. H. Grandjean
Wallace F. Hammer
John R. Casey
Chandler E. Bush, Atty.
D. H. Lott
Sam Salvator D'Angelo
Rev. Archie Matson
Rev. Alfonso Sanchez, Sr.
Mrs. W. P. Carter
Frank Masey
Rev. Clifford Noland
Paul R. Smith, Atty.
Allan E. Ryan, Atty.
Robert J. Kelleher, Atty.
Ernest L. English, Atty.
Cecil L. Lacy, Atty.
Harry Knowland
Col. Carl F. White
Major Ray E. Schafer
Mr. and Mrs. Fred A. Harris
Hilding Tyner
Warner Bolt
Dr. Howard Patrick McDonnell
Mr. and Mrs. Harry H. Hamilton
Robert N. Baker, Atty.
Frank Johnson, Atty.
Dr. and Mrs. D. A. Murray
Rev. W. P. Carter
Joseph M. Campbell
Mrs. Grant Leslie
Ernest Ramponi
Harry Winters
James O. Bond
Virgil Thoms

Mrs. Robert Brown
Mrs. Marion Barnes
Mrs. Gertrude Brown
Mr. and Mrs. Lee B. Mc
Rabbi Maurice Kirschner
Dr. H. B. Alexander
Dr. Frederick Gruber
Mrs. Hortense Gruber
Ed Schober
James McCarthy, Atty.
Clarence Hagen
Ed Koplin, Jr.
Mrs. John Lindenhauer
Jacob Bubel
Harry Packham
H. E. Schoth
Samuel Fink
Mr. and Mrs. Morton Kaufmann
Martin Goodfriend
Mr. and Mrs. Reginald Harrison
Philip V. Hill
Roy Twele
T. Cedric Brown
R. E. Parker
Thomas L. McQuillan
Dr. James Downey
Ronald H. Higgins
Mrs. Grace P. Collins
John M. Nolan
W. E. Smith
John G. Swisher
Jack Anderson
Mrs. Mabel Mark
Mrs. Viola Anderson
Mr. and Mrs. R. E. Hansen
Mrs. Robert Adkins

Arthur P. Detjil
Dr. Leo J. Madera
Rev. Fred Jolson
Mrs. Frank De Cruz
Edmund Hiams
Robert J. O'Hare
Gordon B. Haycock
T. Nielsen
F. McKinley
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Teldra E. Reyes
Jean Leslie Dorsett
John W. Fisher
Mark T. Oxley
Ben A. Barnard
Vivian L. Wilkes
Charles Irwin Ellis
Louis E. Mahoney
Florine B. Mack
Clifford Noland
Bess Christie
Mr. and Mrs. Paul Ousley
Mr. and Mrs. M. S. Card
Eddie Goodman
Moe Fogel
Mr. and Mrs. Jack Frost
Mr. and Mrs. Howard L. Braucll
Mr. and Mrs. Bill Cummings
Dr. and Mrs. Leo Fogel
A. H. Harmon
U. F. Del Valle
Mrs. C. B. Drew

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after her parents crossed the country in a covered-wagon train.

Mrs. Swift moved to Los Angeles in 1977, residing there 50 years.

(Political Advertisement)

political campaign."

Cyprus is the third largest island in the Mediterranean.

(Political Advertisement)

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The Vote Was 5 To 1 To Elect 15 Freeholders To Draft The New Charter!

Santa Monicans voted last December 5th, to elect a board of Freeholders to draft a new charter. The vote was almost 5 to 1, 7123 votes for the Freeholders as compared with 1577 against. Your Freeholders were elected and have done an heroic job in drafting a charter specifically designed for a "Greater Santa Monica." Don't let yourself down now. Vote "YES" at the polls on November 5th, for the Charter.

The Following Citizens Urge You To Vote "YES" On The New Charter

H. L. Seeley
Roger S. Marshall
Charles R. Newkirk
William A. Morse
Kenneth A. Mitchell
Mr. and Mrs. Ernest Blenkhorn
C. A. Diebold
Thomas M. McCarthy
Russell K. Hart
Robert Nittinger
Earl Nittinger
A. C. Quandt, Jr.
Thomas L. Fisher
Mr. and Mrs. Harvey B. Wilson
Richard Stewart
Edward Altman
H. C. Henshey
Frank Hull
Thomas J. Clyne
David D. Morris
Charles McAlpine
Eric Wilson
Ralph Lamb
Harry F. Clark
I. F. Noxon
Samuel Crawford, Atty.
George C. Secrest
Armand Benoit
Bruce E. Bassett
Jerome Brewer
Herman Dobrott, Atty.
Charles Ashford
C. D. McCarron
Dr. Louis Mahoney
Dr. J. W. Siegfried
J. J. Lang
J. A. Hull
Wilmer Morby
Howard A. Wilson

Mrs. H. Grandjean
Wallace F. Hammer
John R. Corey
Chandos E. Bush, Atty.
D. N. Lott
Sam Salvator D'Angelo
Rev. Archie Matson
Rev. Alfonso Sanchez, Sr.
Mrs. W. P. Carter
Frank Maxey
Rev. Clifford Holand
Paul R. Smith, Atty.
Milan E. Ryan, Atty.
Robert J. Kelleher, Atty.
Ernest L. English, Atty.
Cecil L. Lacy, Atty.
Harry Kneeland
Col. Carl F. White
Mayor Ray E. Schafer
Mr. and Mrs. Fred A. Harris
Hilding Tegner
Warner Hott
Dr. Howard Patrick McConnell
Mr. and Mrs. Harry H. Hamilton
Robert N. Baker, Atty.
Frank Indovina, Atty.
Dr. and Mrs. D. A. Murray
Rev. W. P. Carter
Joseph M. Campbell
Mrs. Grant Leslie
Rev. Wallace N. Pierson
Mr. and Mrs. John Somerset
Ernest Sampson
Harry Winters
James G. Bond
Virgil Tholen
Rev. Fred W. Hatch
Dr. Frank Dyer
H. J. Murphy

Marshall Hickson, Atty
Roy Karsen
Walter E. Carlson
Forrest Macomber, Atty.
Charlie Lovejoy
Dr. Willoughby Wright
Mr. and Mrs. C. E. Freeman
Mrs. Marcus Tucker
Mrs. John Whitcomb
Mrs. Robert Brown
Mrs. Marian Barnes
Mrs. Gertrude Brown
Mr. and Mrs. Leo B. Marx
Rabbi Maurice Kilenberg
Dr. H. B. Alexander
Dr. Frederick Gruber
Mrs. Hortense Gruber
Ed Schober
James McCarthy, Atty.
Clarence Hague
Ed Kolpin, Jr.
Mrs. Jules Lindenbaum
Jacob Rubel
Harry Packham
H. E. Schubb
Samuel Fink
Mr. and Mrs. Morton H. Anderson
Martin Goodfriend
Mr. and Mrs. Reginald H. Harrison
Philip T. Hill
Rex Teele
T. Cedric Brown
Glen Lee Walter
R. E. Parker
Mr. and Mrs. Charles Warren
Thomas L. McQuillan
Dr. James Ramsey
Mrs. Grace F. Collins
Ronald B. Kingston

John M. Nolan
Mr. and Mrs. C. A. Bender
W. E. Smith
John G. Zwicker
Jack Anderson
Mrs. Mabel Mark
Mrs. Viola Anderson
Mr. and Mrs. E. E. Hanson
Mrs. Robert Adkins
Florence Cowan
Phil D. Campbell
A. Jacques Schlaepfer
Laurence H. Elliott
Mrs. Minnie J. Middlekauf
Wimpy (Fred) Tongue
David A. Kidney
Herbert R. Punches
Vance C. Kibbe
D. Walter Petty
Edward L. Brassell
Arthur P. DeNisi
Dr. Leo J. Madsen
Rev. Fred Judson
Mrs. Frank De Cray
Edmund Slama
Robert J. O'Hare
Gordon E. Haycock
T. Nielsen
F. McEntee
Floyd E. Welch
Ysidro E. Reyes
Jean Leslie Cornett
John W. Fisher
Mark T. Gates
Ben A. Barnard
Vivian L. Wilken
Charles Edwin Hills
Louis E. Mahoney
Florine E. Maule
Clifford Holand

Vote "YES" On The Charter Amendment

This Message Sponsored by

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PROOF OF SERVICE

I, Daniel Adler, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On January 21, 2020, I served the following document(s):

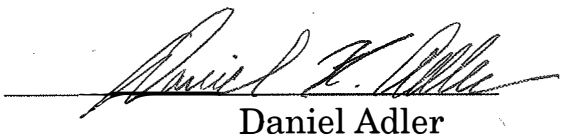
APPELLANT'S REPLY BRIEF

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 21, 2020, in Los Angeles, California.



Daniel Adler

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Respondents' Counsel	**Method of service**
Kevin Shenkman (223315) Mary Hughes (222662) SHENKMAN & HUGHES PC 28905 Wight Road Malibu, California 90265 Tel: 310-457-0970	Electronic service
Milton Grimes (59437) LAW OFFICES OF MILTON C. GRIMES 3774 West 54th Street Los Angeles, California 90043 Tel: 323-295-3023	Electronic service
R. Rex Parris (96567) Ellery Gordon (316655) PARRIS LAW FIRM 43364 10th Street West Lancaster, California 93534 Tel: 661-949-2595	Electronic service
Robert Rubin (85084) LAW OFFICE OF ROBERT RUBIN 237 Princeton Avenue Mill Valley, CA 94941-4133 Tel: 415-298-4857	Electronic service

Trial court	
Hon. Yvette M. Palazuelos Judge Presiding Los Angeles County Superior Court 312 North Spring Street Los Angeles, CA 90012 Tel: 213-310-7009	Mail service

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